United States Court of Appeals

for the Second Circuit

APPENDIX

75-7616

United States Court of Appeals
For the Second Circuit

B

ROSALIE M. ARLINGHAUS, Executrix
of the Will of Frank H. Arlinghaus,
and ROSALIE M. ARLINGHAUS,
individually,

Plaintiff-Appellant,

against

J. RICHMOND RITENOUR and JOHN J. LIPSKY,

Defendants-Appellees,

and

MIRIAM PEPPER and SIDNEY PEPPER,

Defendants.

On Appeal from the United States District Court for the Southern District of New York

JOINT APPENDIX
(Vol. II—Exhibits)
(E-1 – E-268)

CASEY, LANE & MITTENDORF
Attorneys for Appellant
26 Broadway
New York, N.Y. 10004
(212) 943-3000

CHARLES A. SCHARF, ESQ.
Attorneys for Appellees
60 East 42nd Street
New York, N.Y. 10017
(212) 986-4141

DICK BAILEY PRINTERS, 290 Richmond Ave., Staten Island, N.Y. 10302
Telephone (212) 447-5358

PAGINATION AS IN ORIGINAL COPY

INDEX

	Page
Exhibit 1	E1
Exhibit 2	E3
Exhibit 3	E5
Exhibit 4	E43
Exhibit 5	E46
Exhibit 6	E50
Exhibit 7	E52
Exhibit 8	E55
Exhibit 9	E57
Exhibit 10	E59
Exhibit 11	E61
Exhibit 12	E63
Exhibit 13	E65
Exhibit 14	E67
Exhibit A	E71
Exhibit B	E99
Exhibit C	E101
Exhibit D	E112
Exhibit E	E121
Exhibit F	E163
Exhibit G	E184
Exhibit H	E187
Exhibit I	E189
Exhibit J	E191
Exhibit K	(See Exhibit
Exhibit	E194

INDEX (cont'd)

	Page
Exhibit M	E199
Exhibit N	E220
Exhibit O	E222
Exhibit P	E226
Exhibit Q	E230
Exhibit R	E234

EXHIBIT 1

E2

J. R. RITENOUR

April 25, 1967

To the Shareholders of Modern Teleservice, Inc.

John J. Lipsky and I are prepared to pay $15.00 a share for all of the outstanding stock of Modern Teleservice, Inc., if all of such stock is tendered on or before May 12, 1967.

If you wish to accept such offer, please deliver to me in writing a letter to that effect on or before Friday, May 12, 1967.

Very sincerely,

Rud K Ritenour



FPI MI—4 8-74-30M 2001

EXHIBIT 2

E4

Windmill Lane
Hudson, New Jersey

May 12, 1967

Mr. Sidney Pepper
120 Broadway
New York City, New York

Dear Mr. Pepper:

This letter will authorize you to inform Mr. Richard Ritnour and Mr. John Lipsky of Modern Talking Picture Service, Inc., of 615 West 34th Street that I am willing to transfer to a purchaser or purchasers designated by them at the price of $20.00 a share, all the shares of stock of that Corporation held by the estate of Frank H. Arlinghaus; by myself in my own name; and by myself as custodian for Alix Ann Arlinghaus, Frank Arlinghaus, Jr. and John Arlinghaus.

Number	Shares	Name
8	20,300	Rosalie M. Arlinghaus, Executrix of the Estate of Frank H. Arlinghaus
9	4,000	Rosalie M. Arlinghaus
10	2,800	Rosalie M. Arlinghaus as custodian for Alix Ann Arlinghaus a minor U/P.L 4995 Chap. 159 of the Laws of New Jersey
11	2,800	Rosalie M. Arlinghaus as Custodian for Frank M. Arlinghaus, Jr. a minor U/P.L 1955 chap. 159 of the Laws of New Jersey
12	2,800	Rosalie M. Arlinghaus as custodian for John M. Arlinghaus a minor U/P.L. 1955 Chap. 159 of the Laws of New Jersey

PLAINTIFF'S EXH. 2

May 12, 1975

Very truly yours,

Rosalie M. Arlinghaus

EXHIBIT 3

E6

PLAN OF REORGANIZATION and AGREEMENT dated as of November 17, 1967, between FUQUA INDUSTRIES, INC., a Pennsylvania corporation (hereinafter called Fuqua), MODERN TELESERVICE, INC., a New York corporation (hereinafter called Modern), and J. R. RITENOUR and JOHN LIPSKY (hereinafter collectively called the Stockholders).

PLAINTIFF
EXHIBIT
S. DIST. COURT
S. D. OF N. Y.
3
FPI-NI—4-8-74-30M-2001

Modern desires to exchange and Fuqua desires to acquire substantially all Modern's properties solely for shares of voting Common Stock, $5 par value, of Fuqua (hereinafter called Fuqua Common Stock). Following the receipt by Modern of the Fuqua Common Stock in exchange for substantially all its properties as contemplated herein, Modern proposes to distribute the Fuqua Common Stock to its stockholders in exchange for their Modern stock. Now, therefore, the parties hereto agree as follows:

1. Plan of Reorganization. Fuqua and Modern hereby adopt a Plan of Reorganization pursuant to the provisions of Section 368(a)(1)(C) of the Internal Revenue Code of 1954, as amended, to be effectuated in the manner hereinafter set forth.

2. Transfer of Assets. (a) Upon the terms and subject to the conditions set forth in this Agreement, Modern agrees at the Closing (as hereinafter defined) to convey, assign, transfer and deliver to Fuqua, and Fuqua

agrees to acquire and accept from Modern all the assets, properties, goodwill and business of Modern as a going concern (except the assets referred to in Section 2(b)), together with such additions thereto as shall occur from the date hereof to the Closing Date (as hereinafter defined), and the right to use the name "Modern Teleservice, Inc." or similiar names (said assets and rights being hereinafter called the Acquired Assets).

(b) Anything hereinabove to the contrary notwithstanding, the following assets and properties shall be retained by Modern:

(i) Cash not in excess of $10,000 in such amount as may be agreed upon by Modern and Fuqua to cover Modern's tax and other expenses in connection with its performance of this Agreement and its liquidation and dissolution. Modern shall promptly pay over to Fuqua, not later than June 30, 1968, such cash which Modern does not expend in payment of such expenses.

(ii) The minute books, stock books and corporate seal of Modern, provided that upon the dissolution of Modern, Modern shall deliver to Fuqua, as custodian, the corporate records and seal retained by Modern as provided in this Section 2(b)(ii). Such books and records shall be available to Modern and its representatives for use in connection with tax matters and the liquidation of Modern

and Modern shall have the right to borrow such documents and to make copies thereof for presentation in any litigation or proceeding in which Modern may be involved. Such books and records shall be preserved by Fuqua for at least six years after the Closing.

(iii) Modern's rights under this Agreement.

3. Consideration. (a) In consideration of the assignment, transfer and delivery of Modern's assets to Fuqua as provided herein, Fuqua shall at the Closing issue and deliver to or upon the order of Modern 58,800 shares of Fuqua Common Stock. No certificates for fractional shares of Fuqua Common Stock shall be issued to Modern or upon transfer of the Fuqua Common Stock certificate or certificates issued to Modern.

4. Assumption of Liabilities. (a) At the Closing

RIDER TO BE ADDED TO SECTION 3 (A)

The references to number of shares of Fuqua Common Stock in this paragraph shall be appropriately adjusted to reflect any stock dividend, split-ups, recapitalization or exchange of shares after the date hereof.

and Modern shall have the right to borrow such documents and to make copies thereof for presentation in any litigation or proceeding in which Modern may be involved. Such books and records shall be preserved by Fuqua for at least six years after the Closing.

(iii) Modern's rights under this Agreement.

3. Consideration. (a) In consideration of the assignment, transfer and delivery of Modern's assets to Fuqua as provided herein, Fuqua shall at the Closing issue and deliver to or upon the order of Modern 58,800 shares of Fuqua Common Stock. No certificates for fractional shares of Fuqua Common Stock shall be issued to Modern or upon transfer of the Fuqua Common Stock certificate or certificates issued to Modern.

4. Assumption of Liabilities. (a) At the Closing Fuqua shall assume and agree to pay, perform and discharge:

(i) all the debts, liabilities, obligations, contracts and commitments of Modern as of the close of business on the Closing Date; and

(ii) all the federal, state and municipal tax liabilities of Modern except for transactions occuring after the Closing Date.

(b) Notwithstanding the foregoing, Fuqua shall not assume or be obligated to pay, perform or discharge;

(i) liabilities or obligations of Modern to make distributions to its stockholders as dividends in liquidation or otherwise;

(ii) liabilities and obligations of Modern under or with respect to any transaction occurring after the Closing Date;

(iii) liabilities and obligations of Modern incurred in connection with or related to the transfer of assets and business pursuant to this Agreement, or in connection with Modern's liquidation and dissolution;

(iv) any liabilities or obligations, under employment agreements or otherwise, to any of Modern's officers, directors or stockholders (except with regard to salary or wages for services rendered on or prior to the Closing Date); and

(v) Modern's obligations under its Profit Sharing Plan.

(c) Nothing contained in the Section 4 shall relieve Modern or the Stockholders from any obligation under covenants, warranties or agreements contained in this Agreement.

5. The Closing, Etc. (a) Consummation of the transfer and acquisition of the assets hereunder shall constitute the Closing and the place, date and time of the Closing

E11

shall be at the offices of Modern, 619 West 54th Street, New York, at 2 p.m. ~~on the tenth business day following~~ the receipt of the ruling referred to in Section 11(e), or at such other time and place as Modern and Fuqua may mutually agree (said time and place of Closing are herein called the Closing Date).

(b) At the Closing Modern will execute and deliver to Fuqua proper instruments of assignment, conveyance and transfer, in the form approved by counsel for Fuqua, of all its right, title and interest in and to all of the Acquired Assets.

(c) At the Closing Fuqua will issue and deliver to Modern shares of Fuqua Common Stock as provided herein.

(d) On the Closing Date Modern will change its name to such other dissimiliar name as will permit Fuqua to use the name of Modern or to use a subsidiary having the name of Modern, or a name similiar thereto to carry on the business of Modern and to qualify such subsidiary in all states in which Modern is engaged in business and Modern will, in connection therewith, execute such consents to said use or incorporation, or qualification as ma ir the opinion of counsel of Fuqua, be necessary or expedient.

6. Dissolution of Modern. Modern agrees as soon as practicable after the Closing Date to take all necess ry and appropriate proceedings under the laws of the State of New York for dissolving and distributing the shares of Fuqua Common Stock to be received by it pursuant to this

Agreement among its stockholders pro rata in accordance with their respective interests.

7. Representations and Warranties of Modern and Stockholders. Modern and the Stockholders, jointly and severally, represent, warrant and agree as follows:

(a) Organization and Qualification of Modern. Modern is a corporation duly organized, validly existing and in good standing under the laws of New York and is duly qualified as a foreign corporation and is in good standing in New Jersey, Illinois and California. Modern has the corporate power and is entitled to carry on its business and to own, lease and operate its properties in the places where such business is now conducted and such properties are now owned, leased and operated.

(b) Subsidiaries. Modern has one wholly-owned subsidiary, Modern Teleservice, Inc., a Delaware corporation (hereinafter called MTS), which does not own any properties or assets and does not conduct any business. Modern owns all the issued and outstanding stock of MTS free and clear of all liens, charges or encumbrances of any nature whatsoever. There are no outstanding warrants, options or other commitments relating to the authorized and unissued or to the issued shares of MTS.

(c) Capital Stock. The authorized capital stock of Modern consists of 100,000 shares of Common Stock, $1 par value. There are presently issued and outstanding 58,800 shares of such Common Stock, all of which are duly and validly issued, fully paid and nonassessable. Modern holds

no shares of its Common Stock in its treasury. There are no outstanding warrants, options or other commitments relating to the authorized and unissued shares of such Common Stock.

(d) Financial Statements. The balance sheets of Modern as of December 31, 1964, 1965, 1966, and the statements of income for the three years ended on those dates, heretofore delivered to Fuqua, and the balance sheet of Modern as of September 30, 1967, and the statement of income for the nine months ended on that date (attached hereto as Exhibit A), have been prepared in conformity with generally accepted accounting principles applied on a consistent basis and fairly present the results of operation for the respective periods indicated in such income statements. The balance sheets as of December 31, 1964, 1965 and 1966 and the statements of income for the years then ended have been certified by Main Lafrentz and Company, independent public accountants. The balance sheet and income statement for the nine months ended September 30, 1967, have been certified to the best knowledge and belief of the Treasurer of Modern. On September 30, 1967, Modern had no obligations or liabilities, absolute or contingent, which are not shown or provided for in its balance sheet as of September 30, 1967, except (i) those expressly listed in any Exhibit attached hereto and (ii) obligations or liabilities arising out of the operation of Modern's business in the ordinary course and not commonly required to be referred to in financial statements.

(e) Real Property. Attached hereto as Exhibit B is a brief description of all real property leased to Modern.

Modern has valid and enforceable leases not in default with respect to the premises purported to be leased by it, free and clear of all liens, mortgages, charges or encumbrances of any nature whatsoever except those described in Exhibit B. Modern does not own and has not contracted to purchase or acquire any real estate or any interest therein other than as lessee as set forth in Exhibit B.

(f) Personal Property. Modern owns or leases all the personal property reflected in its balance sheet at September 30, 1967, free and clear of all mortgages, liens, charges or encumbrances of any nature whatsoever except as stated in Exhibit C attached hereto. The machinery and equipment owned or leased by Modern are in good operating condition and repair and are adequate for the use to which they are put.

(g) Patents. Modern does not own and is not a licensee of any patents, copyrights, trademarks or applications therefor. Modern owns or possesses adequate licenses or rights to use, all patents, trade secrets, trademarks, trade names or copyrights necessary to conduct its business as now operated.

(h) Contracts and Commitments. Except as set forth in Exhibits C and D attached hereto, Modern is not a party to any written or oral, express or implied (i) contract or commitment for the employment of any officer or employee, (ii) contract or commitment to any labor union, (iii) lease to it as lessee of personal property with an unexpired term

of 180 days or more, (iv) contract for the supply of materials, supplies, equipment or services by it, (v) continuing contract or commitment for the future purchase of materials, supplies, equipment or services, (vi) lease under which it is lessor, (vii) bonus, pension, profit sharing, retirement, stock purchase or stock option plan or any hospitalization, insurance or similar plan or practice, formal or informal, in effect with respect to employees or others, (viii) franchise, distribution or sales agency contract or commitment, (ix) insurance policy, or (x) material contract or commitment not made in the ordinary course of business. Except as described in Exhibit D all rights of Modern in and to each of the contracts, agreements, and other instruments set forth in Exhibit D are transferable and assignable to Fuqua without the consent or approval of the other party thereto.

(i) Litigation.

There are no actions, suits or proceedings (whether or not purportedly on behalf of Modern) pending, or to the knowledge of Modern threatened against Modern which involve the likelihood of any adverse judgment or liability not fully covered by insurance or which may result in any material adverse change in the business, properties or assets or in the condition, financial or otherwise, of Modern. Modern does not know of any order, writ, injunction or decree that has been issued by, or requested of, any court or governmental agency which does or may result in any material

adverse change in its business, properties or assets or in its condition, financial or otherwise.

(j) Taxes. The amounts set up as provisions for taxes on the balance sheet of Modern as of September 30, 1967, are sufficient, to the best of Modern's knowledge and belief, for the payment of all unpaid federal, state, and local taxes of Modern, accrued for or applicable to the period ended on such balance sheet date and all periods prior thereto. Modern has filed all income, excise, property and other tax returns required to be filed by it by the United States of America and any state or other political subdivision thereof, and has paid all taxes which have become due pursuant to such returns and pursuant to any assessment which has been received by it. Federal income tax returns of Modern have been examined by the Internal Revenue Service through the year ended December 31, 1965, and all deficiences proposed as a result of such examination have been paid or settled.

(k) Compliance with Law. To the best of the knowledge and belief of Modern it has complied in all material respects with all laws, regulations and orders applicable to its business.

(l) Insurance. The business properties and assets of Modern of an insurable nature are insured in the amounts and against the risks normally insured against by companies engaged in a business similiar to that of Modern.

(m) Accounts Receivable. All accounts receivable of

Modern are current and collectible except to the extent that a reserve for bad debts, not in excess of $10,000, has been established therefor.

(n) No Default. The execution and delivery of this Agreement and compliance with the terms hereof by Modern will not conflict with, or result in the breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation of any lien, charge or encumbrance upon, any of the properties or assets of Modern pursuant to any corporate charter, by-law, indenture, mortgage, lease, agreement, or other instrument to which Modern is a party or by which it is bound.

(o) Performance of Obligations. Modern has in all respects performed all obligations required to be performed by it to date and is not in default in any respect under any contracts, agreements, leases or other instruments to which it is a party or by which it is bound. True and correct copies of all documents described in any Exhibit attached hereto have heretofore been delivered to Fuqua.

(p) Post Balance Sheet Changes. Since September 30, 1967, Modern has not (i) issued any stock, bonds, or other corporate securities, (ii) incurred any obligations or liability (absolute or contingent) other than current liabilities incurred, and obligations under contracts entered into, in the ordinary course of business, (iii) declared or made any payment or distribution to stockholders, except for a dividend not in excess of $.35 per share, or purchased or redeemed any shares of its capital stock,

(iv) mortgaged, pledged or subjected to lien, charge or any other encumbrance any of its assets, tangible or intangible, other than the lien of current personal property taxes not yet due and payable, (v) sold assigned or transferred any of its assets or cancelled any debts or claims, other than in the ordinary course of business, (vi) suffered any extraordinary losses or waived any rights of substantial value, whether or not in the ordinary course of business, or (vii) entered into any transactions other than in the ordinary course of business.

(q) Execution. The execution and delivery of this Agreement and the transfer of assets of Modern contemplated hereby has been duly and validly authorized by the Board of Directors of Modern.

(r) Representations and Warranties. The representations and warranties made in this Section 7 will be true and correct in all material respects on and as of the Closing Date with the same force and effect as though such representations and warranties had been made on the Closing Date.

8. Representations and Warranties of Fuqua. Fuqua represents, warrants and agrees as follows:

(a) Organization and Qualification. Fuqua is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania, Fuqua has the corporate power and authority to carry on its business and to own or lease its properties in the places where such business is now conducted and where such properties are now owned or leased. Fuqua is in good standing in every jurisdiction in which the nature of its business makes such

qualification necessary. Fuqua has an authorized capital stock consisting of 2,480,000 shares. The stockholders of Fuqua have approved an increase in the authorized capital stock to 2,980,000 shares. As of September 22, 1967 there were 834,994 shares of Fuqua Common Stock, 19,099 shares of Series A $5 Cumulative Convertible Preferred Stock, $100 par value, and 32,831 shares of Series B $2 Cumulative Convertible Preferred Stock, $100 par value, duly and validly issued and outstanding, fully paid and nonassessable. As of November 1, 1967, the number of outstanding shares of Fuqua Common Stock was increased by 84,196 shares upon the effectiveness of the merger of Varco Steel, Inc., an Arkansas corporation, into Fuqua. Upon the effectiveness of the merger of McDonough Securities Company, a Georgia corporation, into Fuqua and the acquisition by Fuqua of the assets of Rome Industries, Inc., a Georgia corporation, the number of outstanding shares of Fuqua Common Stock will be increased by 192,000 shares and there will be outstanding 80,000 shares of First Series $2.50 Convertible Preference Stock, no par value.

(b) Financial Statements. Fuqua has delivered to Modern its consolidated balance sheet as of June 30, 1967 and statement of consolidated income and expense for the six months then ended. Said financial statements have been prepared in conformity with generally accepted accounting principles applied on a consistent basis and present fairly the consolidated financial condition of Fuqua and its consolidated subsidiaries as of June 30, 1967, and the results of their operations for the six months then ended.

(c) Execution. The Board of Directors of Fuqua has duly and validly approved this Plan of Reorganization and Agreement and has authorized the execution and delivery by the proper officers of Fuqua of this Plan of Reorganization and Agreement and the performance by Fuqua of all the acts and transactions contemplated hereby.

(d) Fuqua Common Stock. Fuqua has the authority to issue the shares of Fuqua Common Stock to be issued in exchange for the assets of Modern and such shares of Fuqua Common Stock when delivered to Modern, will be duly and validly issued, fully paid and nonassessable. The shares of Fuqua Common Stock to be delivered pursuant to this Agreement will be duly listed upon the New York Stock Exchange and Fuqua will have the authority to deliver said shares to Modern free and clear of all liens, claims and encumbrances whatsoever.

(e) No Material Adverse Changes. Since June 30, 1967, there has been no material adverse change in the condition, financial or otherwise, of Fuqua and its consolidated subsidiaries as shown on the consolidated balance sheet as of June 30, 1967.

(f) Litigation. Except as set forth in Exhibit E attached hereto, there are no actions, suits or proceedings (whether or not purportedly on behalf of Fuqua or its subsidiaries) pending, or to the knowledge of Fuqua threatened, against Fuqua or its subsidiaries which involve the likelihood of any adverse judgment or liability not fully covered by insurance or which may result in any material adverse change

in the business, properties or assets or in the condition, financial or otherwise, of Fuqua. Fuqua does not know of any order, writ, injunction or decree that has been issued by, or requested of, any court or governmental agency which does or may result in a material adverse change in its business, properties or assets or in its condition financial or otherwise.

(g) No Default. The execution and delivery of this Agreement and compliance with the terms thereof by Fuqua will not conflict with or result in the breach of the terms, conditions or provisions of, or constitute a default under, or result in the creation of any lien, charge or encumbrance upon, any of the properties or assets of Fuqua pursuant to any corporate charter, by-law, indenture, mortgage, lease, agreement or other instrument to which Fuqua is a party or by which it is bound except that the consent of The Chase Manhattan Bank, N.A., Western Pennsylvania Bank and The Fulton National Bank of Atlanta, pursuant to a Credit Agreement dated as of September 30, 1966, between said banks and Fuqua, is required prior to the Closing hereunder.

(h) Representations and Warranties. The representations and warranties made in this Section 8 will be true and correct in all material respects on and as of the Closing Date with the same force and effect as though such representations and warranties had been made on the Closing Date.

9. Covenants of Modern. Modern covenants and agrees as follows:

(a) As soon as practicable after the date of this Agreement Modern will procure the written consent of its stockholders to, or call a meeting of its stockholders for the purpose of considering and taking action on, this Plan of Reorganization and Agreement, the dissolution of Modern and the distribution of its remaining assets among its stockholders.

(b) From the date of this Agreement until the Closing Date Modern will conduct its business diligently in substantially the same manner as heretofore conducted and use its best efforts to preserve its business organization intact, to keep available to Fuqua its present employees and to preserve for Fuqua Modern's relationship with its suppliers, customers and others having business relations with it.

(c) From the date hereof through the Closing Date, Modern will not (i) incur any obligation or liability (absolute or contingent), except current liabilities incurred, and obligations under contracts entered into, in the ordinary course of business; (ii) mortgage, pledge or voluntarily subject to lien, charge or other encumbrance any assets, tangible or intangible; (iii) sell or transfer any of its tangible assets or cancel any debts or claims, except in each case in the ordinary course of business; (iv) sell, assign or transfer any intangible assets; (v) waive any right of any substantial value; or (vi) enter into any transaction or series of transactions other than in the ordinary course of business; except in each case as allowed by this Agreement or with the prior written consent of Fuqua and except further

that Modern may pay to its Profit Sharing Trust the amount it is obligated to pay under its Profit Sharing Plan with respect to its 1967 earnings. Modern represents that the total payroll of persons eligible to participate under its Profit Sharing Plan will not exceed $300,000 for 1967.

(d) From and after the Closing Date, Modern will not engage in any activity except as required to complete its liquidation and dissolution and the distribution of shares of Fuqua Common Stock as provided for in this Agreement.

(e) All income, franchise, sales and other tax returns and reports of Modern which have not been filed prior to the date hereof (including those relating to periods after the Closing Date) shall be prepared by Modern, but shall not be filed without prior examination and approval of Fuqua's counsel, which approval shall not be unreasonably withheld. If such returns are not filed because of Fuqua's refusal to approve them, Fuqua shall hold Modern and its stockholders and distributees harmless from all proceedings brought by tax authorities.

10. Conditions to Obligations of Fuqua. The obligations of Fuqua hereunder are, at the option of Fuqua, subject to the conditions that, at the Closing Date:

(a) All the terms, covenants and conditions to be complied with or performed by Modern on or before the Closing Date shall have been fully complied with or performed in all material respects.

(b) The representations and warranties made by Modern and the Stockholders herein shall be correct in all material

respects, on and as of the Closing Date, and Modern shall have caused to be delivered to Fuqua a certificate to that effect dated the Closing Date and signed by Modern and the Stockholders.

(c) All actions, proceedings, instruments and documents required to carry out this Agreement by Modern or incident thereto, and all other related matters, shall have been approved by counsel for Fuqua.

(d) Fuqua shall have received the opinion of Messrs. Dewitt, Pepper and Howell, counsel for Modern, dated the Closing Date, in form and substance satisfactory to Fuqua's counsel, to the effect that: (i) Modern is a corporation duly organized, validly existing and in good standing under the laws of the State of New York and is duly qualified and in good standing as a foreign corporation in New Jersey, Illinois and California, (ii) Modern has full power and authority to convey, assign, transfer and deliver its assets to Fuqua as provided in this Agreement, (iii) all corporate and other proceedings required to be taken by or on the part of Modern to authorize it to carry out this Agreement and to convey, assign, transfer and deliver to Fuqua the Acquired Assets in accordance with this Agreement have been duly and properly taken, (iv) this Agreement has been duly executed by Modern and the Stockholders and is a legal, valid and binding obligation of Modern and the Stockholders in accordance with its terms, and, (v) the instruments delivered by Modern to Fuqua have been duly authorized, executed and delivered, are legal, valid and binding in accordance with their terms, sufficient for

purposes of recordation and filing where permitted by law and have vested in Fuqua all right, title and interest of Modern in the Acquired Assets.

(e) Fuqua shall have received the consent of the Chase Manhattan Bank, N.A., Western Pennsylvania National Bank, and The Fulton National Bank of Atlanta to the acquisition by Fuqua of the business and assets of Modern pursuant hereto.

(f) Each of the Stockholders shall have entered into employment agreements with Fuqua or one of its subsidiaries.

(g) Each of the Stockholders will from the date hereof to the Closing Date continue to be employed as an officer of Modern.

(h) Fuqua shall have received from each "affiliate" of Modern as defined in Rule 133 of the General Rules and Regulations under the Securities Act of 1933 an agreement not to dispose of the shares of Fuqua Common Stock received hereunder except in accordance with the limitations of such Act.

11. Conditions to Obligations of Modern. The obligations of Modern hereunder are, at the option of Modern, subject to the conditions that, at the Closing Date:

(a) All the terms, covenants and conditions of this Agreement to be complied with or performed by Fuqua on or before the Closing Date shall have been fully complied with or performed in all material respects and the consents referred to in Section 8(g) have been obtained.

(b) The representations and warranties made by Fuqua herein shall be correct in all material respects, on and as of the Closing Date, with the same force and effect as

though such representations and warranties had been made on the Closing Date and Fuqua shall have caused to be delivered to Modern a certificate to that effect dated the Closing Date and signed by Fuqua.

(c) All actions, proceedings, instruments and documents required to carry out this Agreement or incident thereto, and all other related legal matters, shall have been approved by counsel for Modern.

(d) Modern shall have received an opinion of Lawrence P. Klamon, General Counsel of Fuqua, dated the Closing Date, in form and substance satisfactory to Modern's counsel, to the effect that (i) Fuqua is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania; (ii) Fuqua has full power to acquire the assets as provided herein, (iii) all corporate and other proceedings required to be taken by or on the part of Fuqua to authorize it to carry out the Plan of Reorganization and Agreement and to deliver the shares of Fuqua Common Stock in accordance with this Plan of Reorganization and Agreement have been duly and properly taken, (iv) this Plan of Reorganization and Agreement has been duly executed by Fuqua and is a legal, valid and binding obligation of Fuqua in accordance with its terms, (v) the shares of Fuqua Common Stock to be delivered hereunder when issued will be validly issued, fully paid and nonassessable, (vi) the delivery of shares of Fuqua Common Stock to Modern and by Modern to its stockholders in dissolution does not require registration under the Securities Act of

1933, as amended, and (vii) the shares to be delivered hereunder have been duly listed under the New York Stock Exchange.

(e) Modern shall have received from the Internal Revenue Service a ruling to the effect that pursuant to this Plan of Reorganization and Agreement:

(i) The acquisition by Fuqua of substantially all of the properties of Modern, in exchange solely for Fuqua Common Stock, as contemplated herein, will constitute a reorganization within the meaning of Section 368(a)(1)(C) of the Internal Revenue Code of 1954 (hereinafter called the Code).

(ii) Pursuant to Section 361(a) of the Code, no gain or loss will be recognized to Modern on the transfer of its properties in exchange for Fuqua Common Stock;

(iii) The basis of the properties of Modern acquired by Fuqua will be the same in the hands of Fuqua as in the hands of Modern, as provided in Section 362(b) of the Code;

(iv) No gain or loss will be recognized to the stockholders of Modern upon the receipt by them of shares of Fuqua Common Stock in exchange for their stock of Modern, as provided in Section 354(a) of the Code; and

(v) The basis of the Fuqua Common Stock received by Modern's stockholders will be the same as

the basis of their Modern stock surrendered in exchange therefor, as provided in Section 358(a) of the Code.

(f) The holders of more than two-thirds of the issued and outstanding capital stock of Modern shall have voted in favor of, or the holders of all such stock shall have consented to, the transfer of Modern's properties and assets to Fuqua under this Agreement.

12. Conditions to the Respective Obligations of Fuqua and Modern. The respective obligations of Fuqua and Modern are, at the option of Fuqua and Modern, respectively, subject to the further condition that:

(a) No action or proceeding shall be pending or threatened on the Closing Date wherein an unfavorable judgment decree or order would prevent or make unlawful the carrying out of this Agreement or would cause the transaction contemplated by this Agreement to be rescinded or would require Fuqua to divest itself of any of the business or assets of Modern; in the event of the receipt of any communication from any person or department or agency of government, prior to the Closing Date with regard to the transactions contemplated hereby, Fuqua shall be the sole judge of whether such communication shall be interpreted as a threat of such proceeding.

(b) The Closing hereunder shall have occurred on or prior to March 1, 1968.

13. Covenants of Stockholders. Each of the Stockholders covenants and agrees that (i) at any stockholders meeting of Modern which will act upon this Agreement, he will vote

all shares of Modern's stock which he owns in favor of adopting this Agreement and will recommend to the other stockholders that they vote their shares of Modern in favor of this Agreement or (ii) he will consent in writing to the adoption of this Agreement by Modern.

14. Access to Premises. Between the date hereof and the Closing Date Modern will afford the officers and authorized representatives of Fuqua free and full access to the premises, properties, books and records of Modern in order that Fuqua may have full opportunity to make such investigations as it shall desire, and the officers of Modern will furnish Fuqua with such additional financial and operating data and other information as to the business and properties of Modern as Fuqua shall from time to time reasonably request.

15. Expenses; Finders' Fees. Except as otherwise provided herein, Fuqua and Modern shall each pay its own expenses in connection with this Agreement and the transactions contemplated hereby. The brokerage fees of Roy Hertz will be paid by Fuqua. Fuqua agrees to indemnify Modern against any claims of third parties for brokerage commissions or finders' fees in connection with the transactions contemplated hereby in so far as such claims are alleged to be based on arrangements or agreements made by Fuqua, and Modern agrees to indemnify Fuqua against any such claims in so far as they are alleged to be based on arrangements or agreements by Modern or its stockholders.

16. Survival of Representations. The covenants,

representations and warranties contained in this Agreement shall survive the Closing hereunder.

17. Miscellaneous. (a) The parties may, by written agreement, (i) extend the time for the performance of any of the obligations or other acts of the parties hereto, (ii) waive any inaccuracies in the representations contained in this Agreement or in any document delivered pursuant to this Agreement, and (iii) waive compliance with or modify any of the covenants contained in this Agreement and waive or modify performance of any of the obligations of any of the parties hereto. Any agreement on the part of either party for any such extension, modification or waiver shall be validly and sufficiently authorized for the purposes of this Agreement if authorized by the President or a Vice President of such party, in the case of Modern and Fuqua, and by the Stockholders.

(b) Modern and the Stockholders agree to make any changes in this Plan of Reorganization and Agreement which may be required by the Internal Revenue Service in order to enable the latter to deliver the ruling described in Section 11(e) hereof. Fuqua agrees to make any such changes in this Plan of Reorganization and Agreement which, in its sole judgment, it deems to be reasonable.

(c) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, provided, this Agreement shall not be assigned by Fuqua, except to a wholly-owned subsidiary.

In the event of an assignment by Fuqua of any of its rights hereunder to a wholly-owned subsidiary of Fuqua, the fulfillment by such subsidiary of the conditions to Modern's obligations hereunder shall satisfy such conditions.

(d) All notices, consents, requests, instructions, approvals and other communications provided for herein shall be validly given, made or served, if in writing and delivered personally or sent by registered mail, postage prepaid, if to Modern, or the Stockholders, addressed to Modern, attention J. R. Ritenour, 619 W. 54th Street, New York, New York, and if to Fuqua, attention to J. B. Fuqua, 3800 First National Bank Building, Atlanta, Georgia 30303.

(e) This instrument and the Exhibits annexed hereto and made a part hereof contain the entire agreement between the parties hereto with respect to the exchange and acquisition of assets and the other transactions contemplated herein, supersede all prior agreements or understandings between the parties hereto relating to the subject matter hereof and shall be governed by the law of the State of New York.

(e) This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and their respective corporate seals to be affixed hereto, all as of the day and year first above written.

E32

FUQUA INDUSTRIES, INC.

[Corporate Seal]

By_____
J. B. Fuqua
President

ATTEST:

_____
Lawrence P. Klamon
Secretary

MODERN TELESERVICE, INC.

[Corporate Seal]

By_____
J. R. Ritenour
President

ATTEST:

_____
Richard Russell
Secretary

STOCKHOLDERS

_____
J. R. Ritenour

_____
John Lipsky

NEW YORK CHICAGO LOS ANGELES

Modern Teleservice, Inc.

ST 54th STREET, NEW YORK, N. Y. 10019 765-4500 Teletype NY 212 — 640-6662

IBIT B

MODERN TELESERVICE, INC.
LEASED REAL PROPERTY

ELAB INC.
WEST 54TH STREET
YORK, NEW YORK

ENTIRE 4TH FLOOR AT 619 WEST 54TH STREET
EXPIRES APRIL 30, 1970 - ANNUAL RENTAL $38,500.00

S TRUST & SAVINGS
#31557
: HOWARD L. STORCH
201 EAST OHIO STREET
CHICAGO, ILL.

ENTIRE 2ND FLOOR AND PORTION OF BASEMENT
AT 201 EAST ERIE STREET, CHICAGO, ILL.
EXPIRES DECEMBER 31, 1970 - ANNUAL RENTAL 24,000.00

LAYGOER, INC.

ENTIRE IST AND 2ND FLOOR OF ~~LEFT WING AT~~
1153 NORTH MC CADDEN PLACE, LOS ANGELES, CALIF.
EXPIRES SEPTEMBER 30, 1973 - ANNUAL RENTAL 18,000.00

LEASED PERSONAL PROPERTY

ALLEN BROTHERS, INC.

ONE (1) COMPANY AUTOMOBILE
EXPIRES: OCTOBER 26, 1969 ANNUAL RENTAL: $2,760.00

NEW YORK CHICAGO LOS ANGELES

Modern Teleservice, Inc.

WEST 54th STREET, NEW YORK, N. Y. 10019 765-4500 Teletype NY 212 — 640-6662

HIBIT D

MODERN TELESERVICE, INC.
EMPLOYEE BENIFITS

OUP LIFE AND EXTENDED MEDICAL
MASSACHUSETTS MUTUAL
POLICY #GI-14366

SABILITY
UNION MUTUAL
POLICY #I2235

ZURICH INSURANCE COMPANY
POLICY #I512060 (CHICAGO EMPLOYEES)
POLICY #01875049 (NEW YORK EMPLOYEES)

OSPITALIZATION
BLUE CROSS - BLUE SHIELD
(EMPLOYEE EXPENSE)
EXCEPT CHICAGO UNION PERSONNEL (112.00 PER MONTH)

TOTAL: APPROX. COMPANY EXPENSE $590.00 PER MONTH

ROFIT SHARING PLAN

Resolution of Board of Directors adopted on September 13, 1965, relating to death benefits for J. R. Ritenour and John Lipsky copy of which has been furnished to Fuqua.

NEW YORK CHICAGO LOS ANGELES

Modern Teleservice, Inc.

WEST 54th STREET, NEW YORK, N. Y. 10019 765-4500 Teletype NY 212 — 640-6662

EXHIBIT D

MODERN TELESERVICE, INC.
COMPANY INSURANCE

OFFICERS LIFE	ANNUAL COST
MASSACHUSETTS MUTUAL	
POLICY #4-075-146	$ 5,992.00 LIPSKY
POLICY #4-030-536	5,476.00 RITENOUR
POLICY #4-045-466	8,210.00 RITENOUR

NEW YORK CHICAGO LOS ANGELES

Modern Teleservice, Inc.

VEST 54th STREET, NEW YORK, N. Y. 10019 765-4500 Teletype NY 212 -- 640-6662

HIBIT D

MODERN TELESERVICE, INC.
UNION CONTRACTS

EW YORK:

MOTION PICTURE MACHINE OPERATORS
UNION LOCAL #306 EXPIRES: JANUARY 16, 1968

I.A.T.S.E. FILM EXCHANGE EMPLOYEES
UNION LOCAL B-51 EXPIRES: APRIL 30, 1968

HICAGO:

MOTION PICTURE LABORATORY TECHNICIANS
UNION LOCAL #780 EXPIRES: AUGUST 31, 1968

LEASED PERSONAL PROPERTY

LLEN BROTHERS, INC.

ONE (1) COMPANY AUTOMOBILE
EXPIRES: OCTOBER 26, 1969 ANNUAL RENTAL: $2,760.00

PREPARED FOR 619 W. 54th Street
New York, New York

200 PARK AVENUE, SUITE 4402
NEW YORK, N. Y. 10017
PHONE (212) 682-6334

PROPERTY LOCATION: (IF DIFFERENT FROM ABOVE)

DATE PREPARED:

COVERAGE	AMOUNT OR LIMITS	TERM IN YEARS	EXPIRES	COMPANY	POLICY NUMBER	PREMIUM	COMMENTS
Package Contract 'ALL RISK' Physical Damage	1)150,000 2) 30,000 3) 50,000	1	1/1/69	Centennial	291-626-448	Ann Dep 1966 cost 2596.38	1)619 W.54th St., NYC 2)201 W. Erie, Chicago 3)1153 N. McCadden, Los Angeles
Extra Expense Location (1)	50,000						Earthquake covered in California
Comprehensive General Liability	500/1,000 50,000						
Transit	5,000						
Property in Custody of any one customer	300.						
Property in any unnamed location	10,000						

We present this schedule so you may get an overall picture of your insurance protection. If you have policies from other insurance offices we suggest you add them to this list to present the complete picture.

Please examine this schedule with particular reference to the amount or limits of your insurance. Today's property values and liability judgments are higher and insurance should be adjusted to cover.

E38

PREPARED Modern Teleservice, Inc.

200 PARK AVENUE, SUITE 4402

FOR

L

NEW YORK, N. Y. 10017
PHONE: (212) 682-6334

PROPERTY
LOCATION: (IF DIFFERENT FROM ABOVE)

DATE PREPARED:

COVERAGE	AMOUNT OR LIMITS	TERM IN YEARS	EXPIRES	COMPANY	POLICY NUMBER	PREMIUM	COMMENTS
nket Catastrophe iability Policy (Umbrella)	5,000,000	3	1/1/69	I N A	XBC 1891	$ 1,025.	Excess of basic auto & liability policies. Uninsured losses subject to 10,000ded.
bove for:							
J. R. Ritenour	1,000,000	3	12/10/68	INA	XIC 2875	207.	As above
John J. Lipsky	"		7/6/69	"	XIC60499	207.	
Richard A. Russell	"		7/6/69	"	XIC60484	207.	
luable Papers & Records	1) 5,000 2) 3,000 3) 3,000	3	4/26/70	Royal Ind Co	WQS237815	159.	For Reconstruction of Acct's Rec. Records
mprehensive Crime Coverage	100,000	3	12/31/69	Royal Ind Co.	509400	524.20	100,000 Employee Dishon. 100,000 Deposit Forgery 25,000 " " Personal Account J.R. Ritenour

E39

We present this schedule so you may get an overall picture of your insurance protection. If you have policies from othe. insurance offices we suggest you add them to this list to present the complete picture.

Please examine this schedule with particular reference to the amount or limits of your insurance. Today's property values and liability judgments are higher and insurance should be adjusted to cover.

PREPARED FOR Modern Teleservice, Inc.

INSURANCE
200 PARK AVENUE, SUITE 4402
NEW YORK, N. Y. 10017
PHONE: (212) 682-6334

PROPERTY LOCATION: (IF DIFFERENT FROM ABOVE)

DATE PREPARED:

COVERAGE	AMOUNT OR LIMITS	TERM IN YEARS	EXPIRES	COMPANY	POLICY NUMBER	PREMIUM	COMMENTS
Workmen's Compensation	Stat.	1	1/1/68	Atlantic Mut	400319212	Deposit $2,529.	Employers Liability- $100,000
D B L	Stat.	Cont	Cont	Zurich	GD1512060	-	Chicago Employees
D B L	"	"	"	"	1875049	-	New York Employees
Error & Omissions	25,000	3	1/1/68	Lloyds	L106118	Ann Dep $ 5,000.	
Comprehensive Auto Liability	500/1,000BI 25,000PD	1	1/1/68	Atlantic Mut	366002912	$ 44.80	

We present this schedule so you may get an overall picture of your insurance protection. If you have policies from other insurance offices we suggest you add them to this list to present the complete picture.

Please examine this schedule with particular reference to the amount or limits of your insurance. Today's property values and liability judgments are higher and insurance should be adjusted to cover.

E40

EPARED Modern Teleservice, Inc.

FOR

200 PARK AVENUE, SUITE 4402
NEW YORK, N. Y. 10017
PHONE: (212) 682-6334

ROPERTY
OCATION: (IF DIFFERENT FROM ABOVE)

DATE PREPARED:

COVERAGE	AMOUNT OR LIMITS	TERM IN YEARS	EXPIRES	COMPANY	POLICY NUMBER	PREMIUM	COMMENTS
vel Accident Ins.	100,000 50,000 25,000	3	1/1/70	Continental	GTA 1683	$ 728.80	Class I- Over 20,000 ClassII- 10- 20,000 ClassIII- Under 10,000
cial Property Floater	Scheduled	3	12/31/69	Atlantic Mut	222-085-367	744.00	Covers Projection & related Photographic Equip.
~~ation Non-Ownership~~	~~1,000,000~~	~~1~~	~~9/1/67~~	~~I N A~~	~~ANM68093~~	~~Nil~~	Premium paid by MTPS since they have only known exposure
cess Fire Property Damage Locations: 958 Seward, Los Angeles 1153 McCadden, LosAngeles 619 W. 54th St., N Y C 1322 W. Belmont, Chicago 201 W. Erie, Chicago	See Comment	3	10/1/67	Maryland Cas.	SP 72- c 471555	$4,250.	Limits: Basic 1)240,000 10,000 2)275,000 50,000 3)390,000 150,000 4) 10,000 10,000 5)485,000 30,000

E41

We present this schedule so you may get an overall picture of your insurance protection. If you have policies from other insurance offices we suggest you add them to this list to

Please examine this schedule with particular reference to the amount or limits of your insurance. Today's property values and liability judgments are higher and insurance should be adjusted to cover.

As a result of the merger in September 1966 with The Polaris Corporation ("Polaris"), Fuqua is obligated to defend proceedings which were then pending against Polaris or its subsidiaries. These proceedings include an action, pending since March 1966 in an Indiana circuit court, which was brought by a former director of Polaris and officer of certain of its subsidiaries alleging that $685,000 is due on a note from Polaris. Polaris had previously delivered cash and property in payment of such obligation.

Several actions have been commenced against subsidiaries of Fuqua in connection with an automobile accident involving an employee. The total damages sought exceed the coverage offered by applicable insurance policies. In addition Fuqua is involved in other litigation which is either incident to the routine nature of its business or is not material.

EXHIBIT 4

THE AMERICAN NAME IN SWISS PRECISION
RDM

RESEARCH DEVELOPMENT MANUFACTURE, INC.
429 EAST COLLOM STREET • PHILADELPHIA • PENNSYLVANIA 19144
PHONE: GLADSTONE 5-0700 CABLE ADDRESS: REDEM - PHILADELPHIA

#1103 Forest Road
Res: Wilmington, Delaware

Mr. J. R. Ritenour and Mr. John Lipsky
c/o Modern Telewire, Inc.
619 W. 54th St.
New York, N.Y.

Sunday April 23, 1961

Dear J.R.R and J.L.

This is to confirm our understanding that we have agreed to form Modern Telewire (a Dela. Corp.) with STAT, Jacques Zimmer and Harris Shapiro.

We have also agreed to gift 12½% of this common stock to J.R.R and the same to J.L.

In addition we authorize you to negotiate on behalf of the new corporation to purchase 100% of the outstanding stock of Modern Telewire Inc (N.Y.) at a price not to exceed $1,000,000.—.

If you are successful we agree to gift to you 50% of the difference between the purchase price and one million dollars. i.e. cost of $800,000 would net you $100,000 cash, plus the stock.

THE AMERICAN NAME RDM IN SWISS PRECISION

RESEARCH DEVELOPMENT MANUFACTURE, INC.

429 EAST COLLOM STREET • PHILADELPHIA • PENNSYLVANIA 19144

PHONE: GLADSTONE 5-9700 CABLE ADDRESS: REDEM - PHILADELPHIA

 Sunday 4-23-67

We are prepared to make a good faith deposit upon signing the necessary agreements of sale and purchase.

This letter embodies all of the details covered in the initialed written memo agreement dated Monday, April 17, 1967.

We have great confidence in Modern Telesery and look forward to a successful conclusion of your negotiations with all the stockholders.

Sincerely yours,

Lewis Hart

e my understanding that you will introduce me t
ting for the Estate, in the event you fail to purchase
K at the low price. (U.S.
e phone Wilmington, Delaware 571-1016

EXHIBIT F

1/

A. First Offer
15 days $ 220,000

Final Offer 1750 1,025,000

Assignment of J.V. + J.V.P. Interests
Provisions:

1. Money available

2. Reasonable work program

3 Percent of equity - subject to farm out to equal N.P.S.

25% to Equity Inc
25% to Equity LLC
25% to Equity PLC
12½% to Equity JRC
12½% to Equity Jr

4. Salaries of JPR + SL

5. Current Income Split

6. Purchase Agreement 100% Approval of Board of Directors

1 - Effective date shall be January 1, 1965.

2 Management Contracts: Ruling:

(a) J.R.R. 5 Year Contracts binding in all respects.

(b) J.L. 5 years plus ~~5~~ joint option ~~plus~~ Julie has the same ~~same~~ ~~Profit~~ Bonus. Benefits with draw would be replaced.

3. Offices: Consider J.F.K. to move to Chairman of Board and J.L. to President of same picture Corp.

10 Remove shareholder provisions which is now in effect.

11. Many Offices: including key man insurance

13 Key-man insurance - Key man life insurance

(1) Funds

300,000 J.L.

250,000 J.R.R. - Need Joint support would be removed

(2) J.R.R. - Sole insurance should be invested in J.L.

EXHIBIT 6

CABLE: LESAVOCATS

E51

DE WITT, PEPPER & HOWELL
ATTORNEYS AND COUNSELLORS AT LAW
120 BROADWAY, NEW YORK, N.Y. 10005
WORTH 4-4040

R. DEWITT (1864-1955)
PEPPER
HOWELL
H. COX

WASHINGTON D.C. OFFICE
1010 VERMONT AVENUE
(202) STERLING 3-3871

June 30, 1967

Mrs. Frank H. Arlinghaus, executrix
of the estate of Frank H. Arlinghaus,
Windmill Lane,
Rumson, New Jersey.

Dear Rosalie:

You have heretofore given us your blank stock power with respect to your shares of Modern Teleservice, Inc. stock represented by certificate No. 8, which we are holding.

You have authorized us to transfer 9,104 shares from the estate's holdings to Mary E. Ritenour, John J. Lapsky and Miriam J. Pepper, respectively, in amounts as agreed to by them upon the present payment to you of three dollars ($3.00) a share and delivery to you of promissory notes of the said purchasers dated July 1, 1967, at the rate of seven dollars ($7.00) a share, aggregating $63,728.00, payable one year after date with interest at the rate of six percent (6%) per annum with the privilege in the signers of the notes to prepay with interest to the date of payment and to be secured respectively by the shares sold by you to the signers of the notes, such shares to be held by us as attorneys and as security for the respective notes.

If the foregoing correctly sets forth your authorization to us, will you kindly sign the original of this letter below the word "Approved" as evidence thereof and return it to us. The executed duplicate of this letter may be retained by you for your records.

Very sincerely,

DeWITT, PEPPER & HOWELL

By _____

Approved:

_____
Rosalie M. Arlinghaus, executrix
of the estate of Frank H. Arlinghaus

EX...
K...
DATE 10/...

EXHIBIT 7

E53

DE WITT, PEPPER & HOWELL
ATTORNEYS AND COUNSELLORS AT LAW
120 BROADWAY, NEW YORK, N.Y. 10005
WORTH 4-4040

IN P. DEWITT (1868-1958)
PEPPER
E. HOWELL
H. COX

WASHINGTON D.C. OFFICE:
1010 VERMONT AVENUE
(202) STERLING 3-3871

June 30, 1967

EXHIBIT F
R&L
EVD.
DATE: 12/30/68 RK

Mrs. Frank H. Arlinghaus,
Windmill Lane,
Rumson, New Jersey.

Dear Rosalie:

In accordance with our telephone conversations there are enclosed authorizations in duplicate to us to deliver on your behalf the 4,000 shares of Modern Teleservice, Inc. stock of record in your name at a price of ten dollars ($10.00) a share, payable at the rate of three dollars ($3.00) now to you in cash by our check and the balance of seven dollars ($7.00) by promissory notes, as more fully set forth in the said authorization. It should be possible to treat the sale as aforesaid as an installment sale for income tax purposes, if only the three dollars ($3.00) in cash is received during 1967. You will not receive any further dividends on the shares sold by you as aforesaid, but will receive interest on the deferred balance of the purchase price as evidenced by the promissory notes. As you know, Mary E. Ritenour is Rich's wife and Miriam J. Pepper is my wife.

There are also enclosed authorizations in duplicate to us to deliver on your behalf as executrix of the Estate of Frank H. Arlinghaus the 9,104 shares of Modern Teleservice, Inc. stock of record in your name as executrix at a price of ten dollars ($10.00) a share, payable at the rate of three dollars ($3.00) now to you as executrix in cash by our check and the balance of seven dollars ($7.00) by promissory notes, as more fully set forth in the said authorization. It should be possible to treat that sale as aforesaid as an installment sale for income tax purposes, if only the three dollars ($3.00) in cash is received during 1967. As executrix you will not receive any further dividends on the shares sold by you as aforesaid, but will receive interest on the deferred balance of the purchase price as evidenced by the promissory notes.

Rich will cause the shares sold by you individually and as executrix to be made available to you for repurchase by you at your option at the same price as you will receive on the sale, namely ten dollars ($10.00), if the estate of Frank H. Arlinghaus does not receive at least the sum of $356,160.00 for its remaining 11,256 shares, as provided in Rich's agreement, and if the estate and you exercise any of the options to repurchase on behalf of the said estate and for yourself as aforesaid, shares sold by the estate and you pursuant to authorizations executed by you simultaneously herewith on behalf of the estate and yourself.

Mrs. Frank H. Arlinghaus June 30, 1967

If you exercise repurchase rights you will not have to refund the interest received by you and you will not obtain a refund of the dividends, if any, declared on the shares sold during the period prior to the repurchase of such shares. Pending the exercise of the repurchase rights, the shares so sold will be endorsed in blank by the purchasers and held in escrow by us for the purpose of securing the unpaid balance on the purchasers' notes and for the purpose of having the stock available for the repurchase options, but only as long as the repurchase options are effective. If the options should not be exercised by you and shall terminate by their own terms, the shares so held by us will be released from escrow by us and delivered to their respective owners.

We agree not to make any charge to you in connection with any such sales or repurchase as aforesaid, except that we may charge the $10,000.00 amount heretofore received from Rich with the letter from Charles A. Scharf, Esq., to Sidney Pepper, Esq., dated May 19, 1967, a copy of which has been heretofore furnished to you, with New York stock transfer tax stamps and any other disbursements in connection with such sales and, if you call upon Rich to cause the stock sold by you as aforesaid to be made available to you for repurchase, we may apply any remaining balance of the said $10,000.00 to our charges in connection with said matters.

If you approve of the foregoing, will you please sign a copy of this letter below the word "Approved" and return it to us as evidence of our authority to carry out the foregoing transaction.

Very sincerely,

DeWITT, PEPPER & HOWELL

By Sidney Pepper

Sp:cm
Enclosures

Approved:

Rosalie M. Arlinghaus

Rosalie M. Arlinghaus,
individually and as executr
of the estate of Frank H.
Arlinghaus

EXHIBIT 8

July 1, 1967

Mrs. Frank H. Arlinghaus,
Windmill Lane,
Rumson, New Jersey.

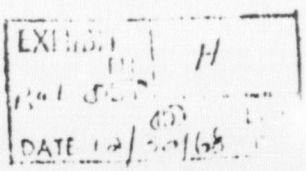
Dear Rosalie:

You have sold 4,000 of your shares in Modern Teleservice, Inc. at ten dollars ($10.00) a share, which are now held by DeWitt, Pepper & Howell, as security for the payment of the purchasers' notes and for the purposes hereof on the basis of my agreement as hereinafter set forth, which I hereby confirm as follows:

If you as executrix do not receive in cash or securities of a company listed on the New York Stock Exchange and acceptable to you, at least the sum of $356,160.00 for the remaining 11,256 shares of Modern Teleservice, Inc. stock owned by the Estate of Frank H. Arlinghaus and in the case of each of your three custodian accounts for your three children $56,000 for the 2,800 shares of Modern Teleservice, Inc. held by you as custodian for your respective children prior to July 1, 1968, I will cause the 4,000 shares presently sold by you to be made available to you for repurchase by you after July 1, 1968 and prior to August 1, 1968 on five days notice to me, at the ten dollars ($10.00) a share sales price.

Very sincerely,

J. Richmond Ritenour



July 1, 1967

Mrs. Frank H. Arlinghaus,
Windmill Lane,
Rumson, New Jersey.

Dear Rosalie:

You have sold 4,000 of your shares in Modern Teleservice, Inc. at ten dollars ($10.00) a share, which are now held by DeWitt, Pepper & Howell, as security for the payment of the purchasers' notes and for the purposes hereof on the basis of my agreement as hereinafter set forth, which I hereby confirm as follows:

If you as executrix do not receive in cash or securities of a company listed on the New York Stock Exchange and acceptable to you, at least the sum of $356,160.00 for the remaining 11,256 shares of Modern Teleservice, Inc. stock owned by the Estate of Frank H. Arlinghaus and in the case of each of your three custodian accounts for your three children $56,000 for the 2,800 shares of Modern Teleservice, Inc. held by you as custodian for your respective children prior to July 1, 1968, I will cause the 4,000 shares presently sold by you to be made available to you for repurchase by you after July 1, 1968 and prior to August 1, 1968 on five days notice to me, at the ten dollars ($10.00) a share sales price.

Very sincerely,

J. Richmond Ritenour

EXHIBIT H
DATE 12/20/68

EXHIBIT 9

July 1, 1967

Mrs. Frank H. Arlinghaus, executrix
of the estate of Frank H. Arlinghaus,
Windmill Lane,
Rumson, New Jersey.

Dear Rosalie:

You have sold 9,104 of your shares in Modern Teleservice, Inc. at ten dollars ($10.00) a share, which are now held by DeWitt, Pepper & Howell, as security for the payment of the purchasers' notes and for the purposes hereof on the basis of my agreement as hereinafter set forth, which I hereby confirm as follows:

If you do not receive at least the sum of $356,160.00 in cash or securities of a company acceptable to you listed on the New York Stock Exchange for the estate's remaining 11,256 shares of Modern Teleservice, Inc. stock prior to July 1, 1968, I will cause the 9,104 shares presently sold by you to be made available to you for repurchase by you after July 1, 1968 and prior to August 1, 1968 on five days notice to me, at the ten dollars ($10.00) a share sales price.

Very sincerely,

J. Richmond Ritenour

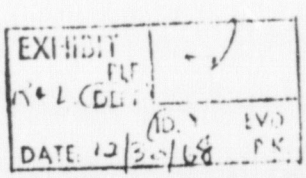


EXHIBIT 10

CLASS OF SERVICE
This is a fast message unless its deferred character is indicated by the proper symbol.

WESTERN UNION TELEGRAM

W. P. MARSHALL, PRESIDENT

SF-1201 (4-60)

SYMBOLS
DL = Day Letter
NL = Night Letter
LT = International Letter Telegram

PIFS Ex. 43 for id. 8/28/69 SF

The filing time shown in the date line on domestic telegrams is LOCAL TIME at point of origin. Time of receipt is LOCAL TIME at point of destination

DUPLICATE OF MESSAGE TELEPHONED

6 PM 3 15

KMA160 (06)(01)SYG259
SY AGA092 (P WUA211) RX PD WILMINGTON DEL 6 1126A EDT
MODERN TELE SERVICE INC, MAT LAB BLDG, ATTN MR RITENOUR
11 AVE AND 54 ST NYK (619 W 54) 4 FLR
PURSUANT TO OUR AGREEMENT JUNE 2 1967 STATING STAT ZINMAN AND SHAPIRO WILL CAUSE TELESERVICE DELAWARE TO RECEIVE A BANK LOAN OF BETWEEN ONE MILLION AND ONE MILLION ONE HUNDRED THOUSAND DOLLARS STOP HAVE OBTAINED SAME WITH UNDERSTANDING BACKUP TO BE LEHIGH VALLEY INDUSTRIES STOP IN ADDITION LEHIGH OFFERS FOUR HUNDRED THOUSAND DOLLARS OF ITS STOCK AS FURTHER DOWN PAYMENT AGAINST FORMULA OF FUTURE EARNINGS STOP FORMULA WOULD PRODUCE IN EXCESS OF TWO MILLION DOLLAR RICE. MONEY IS AVAILABLE IN TIME FOR SETTLEMENT JUNE 9 1967. WILL SAVE OFFICE HARMLESS FROM ANY LAW SUITE
LEWIS STAT
(58).

765-4500

EXHIBIT 11

E62

November 17, 1967

Mr. J. R. Ritenour,
143 Overlook Drive,
Greenwich, Connecticut 06830.

DeWitt, Pepper & Howell, Esqs.,
120 Broadway,
New York, New York 10005.

Gentlemen:

On July 1, 1967 Mr. Ritenour agreed to make certain shares of Modern Teleservice, Inc. available to the undersigned respectively for repurchase under certain circumstances and DeWitt, Pepper & Howell, Esqs. agreed to hold such shares in escrow for the purpose of having the shares available for such repurchase.

We do hereby release each of you from the foregoing obligations but we do not release DeWitt, Pepper & Howell, Esqs. from the obligation to hold such Modern Teleservice, Inc. shares as security to the extent heretofore agreed by DeWitt, Pepper & Howell, Esqs. with us, respectively.

Very truly yours,

Rosalie M. Arlinghaus, individually and as Executrix of the estate of Frank H. Arlinghaus

Anna Marie Schlereth

Elsie W. Cox

Harry W. Bogaards, Jr.

Howard H. Eberle, Trustee U/A dated May 18, 1965

Howard H. Eberle, Jr., Trustee U/A dated May 18, 1965

33s - 475
(4-25-71)
PLAINTIFF'S
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

FPI-MI—4-8-74-30M-2001

EXHIBIT 12

E64

STANDARD & POOR'S CORPORATION
345 HUDSON STREET, NEW YORK, N. Y. 10014

May 9, 1975

Mr. Philip McKnight
Casey Lane & Mittendorf
26 Broadway
New York, New York 10004

Dear Mr. McKnight:

In accordance with your telephone request of May 8, we are pleased to furnish quotations as of the dates indicated, or nearest available thereto, for the following securities:

	Date	High	Low	Close
Fuqua Industries	11-17-67	55 1/8	52 5/8	54 3/4
Sonderling Broadcasting	3-25-68	26 1/2	26 1/8	26 1/8
	4-8-68	30 1/8	29	29 3/4
(8-27-68)	8-28-68 (U.S. Markets Closed)	37	37	37

A bill in the amount of $12.00 to cover costs for this special service will follow in due course.

Cordially,

Patricia A. Allen

Manager
Central Inquiry Department

Patricia A. Allen
fm

EXHIBIT 13

E66

DE WITT, PEPPER & HOWELL

OFFICE COPY

es Illegible)

(Address Illegible)

(Names Illegible)

April 5, 1968

(Notation Illegible)

Mrs. Frank H. Arlinghaus, Executrix
of the Estate of Frank H. Arlinghaus,
Windmill Lane,
Rumson, New Jersey.

Dear Rosalie:

We are holding 9,104 shares of Modern Teleservice, Inc. as collateral for promissory notes executed by J. Richmond Ritenour, John J. Lipsky and Miriam J. Pepper respectively, in your favor.

On the consummation of an exchange for those shares for shares of Sonderling Broadcasting Corporation, we will be holding approximately 18,208 shares of Sonderling Broadcasting Corporation stock as security for those notes aggregating $63,728.00.

Will it be acceptable to you to consent to the release of all shares in excess of 4,000 shares prorata? Such 4,000 shares will continue to be held as security for the respective notes until they are paid in full.

Your consent as aforesaid will make it possible for the holders to liquidate some of their shares and thereby to pay your notes.

Are you willing to grant the makers of the notes an extension of two years to pay the notes, so that they do not have to liquidate their holdings at a time which may not be advantageous?

If you agree to the foregoing, will you please sign the enclosed copy of this letter below the words "Agreed to" as evidence thereof.

Very sincerely,

DeWITT, PEPPER & HOWELL

By Sidney Pepper

SP:cm
enclosure

Agreed to:

(Date Illegible)

(Signature Illegible)

EXHIBIT 14

E68

CHASE MANHATTAN BANK, N.A.

Copy

May 9, 1975

Mrs. Rosalie M. Arlinghaus
Windmill Lane
Rumson, New Jersey 07760

Dear Mrs. Arlinghaus:

Estate of Frank M. Arlinghaus

As requested, the attached sales schedule shows the transactions of Sonderling Broadcasting Corporation in the Estate.

Should you have any questions, please do not hesitate to call.

Sincerely,

Richard T. Tyner, Jr.

Richard T. Tyner, Jr.
Investment Officer

Enc.
S 47927
ad

cc: Preban Jensen, Esq.

ESTATE OF FRANK M. ARLINGHAUS

SALES SCHEDULE OF SONDERLING BROADCASTING CORPORATION

(Received 6/12/68 - 22,971 shares)

Date	Shares Sold	Price	Proceeds
8/1/68	200 shs.	35 3/4	$ 7,066.09
	100 "	36	3,557.92
	200 "	36 1/4	7,165.59
	100 "	35 3/4	3,533.04
8/2	100 "	37 3/8	3,694.73
8/5	200 "	37 1/4	7,364.59
8/6	100 "	37 1/2	3,707.17
8/19	200 "	37 1/2	7,414.35
	200 "	37 1/4	7,364.59
8/23	200 "	37 1/4	7,364.59
8/29	200 "	37	7,314.85
	100 "	37	3,657.42
8/30	1,400 "	36	49,8[illegible].00
9/5	100 "	37	3,6[illegible].42
9/6	100 "	37	3,6[illegible].42
	200 "	37	7,3[illegible].85
9/9	800 "	37 1/2	29,657.40
	200 "	37 5/8	[illegible]39.22
9/10	200 "	38 1/4	7,[illegible]63.58

SALES SCHEDULE OF SONDERLING BROADCASTING CORPORATION con't.

Date	Shares Sold	Price	Proceeds
9/19/68	200 shs.	36	$ 7,115.85
9/20	300 "	36 1/2	10,823.03
	200 "	36 1/4	7,165.59
	100 "	36 1/2	3,607.67
9/26	300 "	36 1/2	10,823.03
4/29/69	400 "	37 3/4	14,928.18
	3,820 "	37 3/4	143,175.25
	25 "	37 5/8	929.65
	900 "	37 3/4	33,732.40
7/14/70	6 "	12 5/8	70.97
	100 "	12 3/4	1,241.60
	100 "	12 3/4	1,236.47
7/15	200 "	12 7/8	2,546.56
	8,200 "	13	105,429.36
	100 "	12 3/4	1,251.47
	300 "	12 7/8	3,791.53
	400 "	12 3/4	5,005.89
	200 "	12 3/4	2,502.94
	300 "	13	3,857.17
5/12/71	50 "	31 3/4	1,567.53
	200 "	32	6,316.12
	20 "	31 7/8	627.79
5/14	100 "	31 1/8	3,088.87
	50 "	31	1,530.22
5/19	100 "	30 1/4	2,985.80
	500 "	30 1/4	14,914.00
5/21	600 "	29 3/4	17,616.36
	300 "	29 7/8	8,893.32
Total:	22,971 shs.		

EXHIBIT A

AGREEMENT made as of this 15th day of October, 1956, between MODERN TELESERVICE, INC., a New York corporation, with an office at 219 East 44th Street, New York 7, New York, hereinafter referred to as "Modern", and each of the undersigned holders of voting trust certificates for capital stock of Modern, hereinafter referred to collectively as the "Certificate Holders",

W I T N E S S E T H :

WHEREAS, the Certificate Holders are the holders of voting trust certificates for shares of the capital stock of Modern issued under a voting trust agreement dated October 15, 1956, and

WHEREAS, the authorized capital of Modern is now 5,000 shares of capital stock without par value, and

WHFREAS, the parties desire to provide that no holder of capital stock of Modern or of voting trust certificates therefor shall sell, transfer or otherwise dispose of any shares of such stock to any party other than the other holders of capital stock of Modern or Modern, without first offering to sell such shares to such other holders of the capital stock of Modern and Modern upon the terms and at a price determined as hereinafter provided, and

WHEREAS, the parties desire to provide that in the event of the death or termination of the employment by Modern of the holder of any shares of capital stock of Modern, the other holders of capital stock of Modern and Modern are given an option to buy from the estate of such holder all shares of the capital stock of Modern owned by such estate or from such holder all of his capital stock of Modern upon the terms and at the price hereinafter provided for,

NOW, THEREFORE, in consideration of the premises and of other good and sufficient consideration, the Certificate Holders, each for himself and not for the others or any of the others, agree with each other and with Modern and Modern agrees with the Certificate Holders and with each of them, as follows:

1. From and after the date hereof the shares of capital stock of Modern and the voting trust certificates issued therefor, hereafter referred to sometimes as "Stock", shall be deemed issued and held by each and every holder of such shares or voting trust certificates, upon and subject to the following terms and conditions:

(a) No holder of shares of Stock shall sell, transfer or in any other way dispose of any shares of Stock which may now or hereafter be held or owned by such holder to anyone other than Modern, without first offering to sell such shares of Stock to the other holders of shares of Stock or to Modern in accordance with the provisions hereof, at a price determined as hereinafter provided, and until such holder shall have first complied with the provisions of this subparagraph and of subparagraph (b). If a holder of shares of Stock shall desire to sell, transfer or in any way dispose of any shares of Stock now or hereafter held or owned by such holder other than to Modern such holder shall offer such shares of Stock for sale to the other holders at that time of shares of Stock, hereinafter called the "Continuing Stockholders", and Modern, as hereinafter provided, and the Continuing Stockholders are hereby given the first option to purchase such shares of Stock, in the ratio of the number of shares

of Stock then held by each of them to the whole number of shares of Stock then issued and outstanding (excluding shares of Stock or voting trust certificates for shares of Stock owned by Modern), and in the event of any Continuing Stockholder failing to exercise, as herein provided, such option as to all or any part of such pro rata portion of the shares of Stock offered, the shares of Stock not so purchased shall be deemed successively offered to the remaining Continuing Stockholders in like ratio as long as a Continuing Stockholder desires, during the period of the first option, to purchase any of such shares of offered Stock; and Modern is hereby given the second option to purchase all or part of the shares of Stock offered, which the Continuing Stockholders fail to purchase under the option hereby given to them, and each such option to purchase shall be at the purchase price determined as hereinafter provided less thirty-three and one-third (331/3) per cent thereof or at the price per share at which such holder of shares of Stock is willing to sell any shares of Stock, as set forth in his offer, whichever is lower; and the first option shall be good for twenty (20) days from the date of the offer in the case of the first offer of such shares of Stock to the Continuing Stockholders and for ten (10) days thereafter in the case of the second offer to the remaining Continuing Stockholders, and the second option to Modern shall be good for the thirty (30) day period immediately succeeding the expiration date of the total thirty (30) day period of the option to the Continuing

Stockholders. Upon the exercise of either of the option rights hereby granted to the Continuing Stockholders and Modern, at least forty (40) per cent (or the lower percentage, if any, which the holder is willing to accept, as provided in his said offer) of the purchase price of the shares of Stock with respect to which such option is exercised, shall be payable in cash and the balance of such purchase price shall be payable in not more than six (6) equal monthly installments as elected by the respective purchasers with interest thereon at the rate of five (5) per cent per annum, which installments shall be evidenced by the execution and delivery to the seller of the negotiable promissory notes of the respective purchasers therefor. Nothing contained in this subparagraph shall be deemed to require Modern or the voting trustee to issue fractional shares, and in the event that the pro rata number of shares which any Continuing Stockholder is entitled to purchase hereunder includes a fractional part of a share, the President of Modern for the time being or the voting trustee may determine the nearest number of whole shares which such Continuing Stockholder is entitled to purchase. Nothing contained in this paragraph 1 shall be construed to prevent any holder of shares of Stock from transferring such shares to voting trustees under a voting trust agreement relating to Stock, or to prevent any new subscriber to Stock from causing such Stock to be issued directly to such voting trustees, and receiving voting trust certificates covering the shares so transferred to or

issued to such voting trustees, and, if shares of Stock shall hereafter be transferred to or issued to such voting trustees, the voting trust certificates issued therefor shall be held by each and every owner thereof subject to the terms and conditions as provided in this paragraph 1 for shares of Stock. Any shares not purchased by the Continuing Stockholders and Modern pursuant to the option rights, as herein provided, may then be sold, transferred and disposed of within the thirty (30) day period immediately succeeding the thirty (30) day period of the second option to Modern, but only to the proposed transferee named in the said offer and pursuant to the said offer. If not so sold, transferred, or disposed of as aforesaid pursuant to the said offer, such shares of Stock shall not be sold, transferred, or disposed of except upon further compliance with the applicable provisions of paragraph 1 hereof.

(b) Every offer for the sale of shares of Stock to the Continuing Stockholders and Modern must be in writing, disclose the name and address of each proposed transferee of any of such shares of Stock, state the nature of the proposed transfer as a gift or otherwise, and, if the proposed transfer is a sale, the purchase price and all other items and conditions with respect to such sale, and be accompanied by the deposit of the certificates for such shares of Stock properly endorsed for transfer and by such instruments as Modern or the voting trustee may reasonably deem necessary for such transfer and by the necessary stock transfer tax stamps, in order to start the time of the

Continuing Stockholders and Modern running under the options granted under subparagraph (a) and the offer and deposit as aforesaid must be made to Modern at the principal office of Modern in the Borough of Manhattan, City and State of New York. As promptly as possible upon the receipt by it of any such offer, Modern shall transmit to the Continuing Stockholders (including the holders of voting trust certificates or other certificates covering shares of Stock of Modern) a copy of the written offer received by it and a written statement of the date when such offer for sale was received by it, in person or by United States registered mail addressed to the Continuing Stockholders at their respective addresses as shown upon the books of Modern or of the voting trustee or other trustees. The options hereunder shall be exercised by the personal delivery of written notice of the election to exercise the same signed by the exerciser of the option or by mailing such notice by United States registered mail prior to the expiration of such option, to the record holder of the shares of Stock covered thereby and to Modern. If given by mail, such notice shall be addressed to such record holder at his address as shown upon the books of Modern or in the case of a voting trust certificate or certificates or other certificates of interest covering shares of Stock, then at the address of the record holder thereof as shown upon the books of the voting trustee or other trustees. Such notice shall state in substance that a Continuing

Stockholder or Modern, as the case may be, has elected to exercise his or its option and that payment for the shares of Stock to be thus purchased will be made upon the delivery thereof to the purchaser at the principal office of Modern in the Borough of Manhattan, City and State of New York, of the certificates therefor properly endorsed for transfer and accompanied by such instruments as Modern or the voting trustee or other trustees may reasonably deem necessary therefor and the necessary stock transfer tax stamps. Each Continuing Stockholder who shall exercise an option granted under paragraph 1 hereof shall prior to the expiration of such option deposit with Modern at its said principal office the sum of money and the notes required for the payment of the purchase price of the shares of the Stock with respect to which he has exercised such option. If a Continuing Stockholder shall fail to make the deposit with Modern as herein provided, such failure shall be deemed to be a failure to exercise his option.

(c) If a holder of any shares of Stock shall die, the estate of such holder may, without first offering such shares of Stock to the Continuing Stockholders and Modern, transfer all or any part of the shares of Stock owned by such estate to the holder's spouse, parents or descendants, if of full age and legally competent, or to a trustee or trustees of a trust under the last will and testament of such deceased holder, all the income from which is payable to or for the benefit of the deceased holder's spouse, parents or descendants. A transfer of the shares of Stock by such a trustee or trustees shall only be made pursuant to the provisions of this agreement,

except that such trustee or trustees, without first offering such shares of Stock to the Continuing Stockholders and Modern, may transfer all or any part of the shares of Stock held by such trustee or trustees to the testator's spouse, parents or descendants, if of full age and legally competent, provided that any further transfer shall only be made pursuant to the provisions of this agreement.

(d) If a holder of any shares of Stock shall die and his estate shall not transfer all of the shares of Stock owned by such estate, as provided in subparagraph (c) hereof within (1) one year of the qualification of the executors or administrators of such estate or (2) the period a capital asset must be held to constitute any gain thereon, a long term capital gain under the United States Internal Revenue Code as then in effect plus two months, whichever is later in time, Modern may notify the Continuing Stockholders thereof within sixty (60) days thereafter and the Continuing Stockholders and Modern are hereby given options to purchase from the estate of such holder all or part of the shares of Stock then owned by such estate at the purchase price determined as hereinafter provided, upon the terms and conditions as to the extent and priority of option and terms of payment as provided in subparagraph (a) hereof, except that the period within which the Continuing Stockholders may exercise their option shall be the thirty (30) day period following the giving of written notice by Modern to the Continuing Stockholders and to the executors or administrators of such estate of the aforesaid option in person or by registered

mail as provided in subparagraph (b) hereof, and the period within which Modern may exercise its option shall be the thirty (30) day period immediately succeeding the expiration date of the thirty (30) day period within which the Continuing Stockholders may exercise their option. In the case of the said executors or administrators, notice mailed as aforesaid to their last known address shall be sufficient. The options may be exercised in the manner provided for in subparagraph (b) hereof. If exercised, the executors or administrators of such estate, shall, upon request made personally or by mail as hereinbefore provided in this subparagraph deposit the certificate or certificates for such shares of Stock with Modern, as provided in subparagraph (b) hereof.

(e) If any holder of any shares of Stock shall cease to be an employee of Modern or Modern Talking Picture Service, Inc, a Delaware corporation, for any cause other than death, and within five (5) years thereafter is employed by or associated with any competitor of either of said corporations in any capacity which is not approved in writing by the Presidents of both of said corporations, pursuant to which he may derive some financial benefit, the Continuing Stockholders and Modern are hereby given options to purchase all or part of the shares of Stock held by such holder, at the purchase price determined as hereinafter provided, less thirty-three and one-third (33-1/3) per cent thereof, and upon the terms and conditions as to extent and priority of option and terms of payment as provided in subparagraph (a) hereof, except

that the period within which the Continuing Stockholders may exercise such option shall commence with the time of such employment or association, as aforesaid, and shall terminate thirty (30) days after the delivery of written notice by the said holder to Modern of the fact of his employment and association, as aforesaid, the name and address of such competitor and the financial benefits which he may derive, and the period within which Modern may exercise its option to purchase all or part of the shares of Stock offered which the Continuing Stockholders fail to purchase under the option given to them shall be the thirty (30) day period immediately succeeding the expiration date of the period within which the Continuing Stockholders may exercise their option. Modern shall, as provided in subparagraph (b) hereof, give promptly to each Continuing Stockholder written notice that such holder has ceased to be such an employee and copies of any writings that its President may obtain showing that such holder is employed by or associated with any competitor in any capacity pursuant to which he may derive some financial benefit and a copy of any written notice received by Modern from such holder. The written notice from the holder to Modern provided for in this subparagraph shall not be deemed delivered to Modern until received by the President of Modern. The options may be exercised in the manner provided for in subparagraph (b) hereof.

(f) The estate of a deceased holder who was a holder of shares of Stock as of the date of this agreement and the deceased holder's spouse, parents, descendants and

trustees to whom shares of Stock were transferred by such estate as permitted in subparagraph (c) hereof, may elect to request Modern by written notice to it to purchase all or any part of such shares of Stock owned by the estate or transferred to them pursuant to subparagraph (c) hereof at the purchase price determined as hereinafter provided and upon terms of payments as hereinafter provided in this subparagraph. The estate, subject to subparagraph (d) hereof may continue to hold all or any part of such shares of Stock in the name of the estate with the right at any time without offering them to the Continuing Stockholders and Modern to transfer them to the legatees or distributees (but not their assignees) of the estate provided that any further transfer of the shares of Stock shall only be made pursuant to the provisions of this agreement. If any of the aforesaid shall elect as herein provided to request Modern to purchase shares of Stock, such holder shall deposit the shares of Stock, documents and stock transfer stamps with Modern as provided in subparagraph (b) hereof. Modern shall then, to the extent it can properly do so, under the laws of the State of New York, purchase for cash at the said purchase price the shares of Stock so deposited. If Modern cannot purchase all the shares of Stock it may be requested to purchase as herein provided, then Modern shall purchase as many shares as it can properly purchase pro rata from all such holders requesting purchase by Modern. At Modern's sole election Modern may give its promissory note or notes for not more than sixty (60) per cent of the purchase price, payable in twenty-four

(24) equal monthly installments with interest at the rate of five (5) per cent per annum with the right in Modern to prepay such note or notes in full or in part at any time.

(g) The purchase price hereunder of a share of Stock and of a voting trust certificate issued therefor, shall be the amount a share set forth in the written agreement bearing the latest date signed by all the holders of shares of Stock and Modern, increased or decreased by a sum determined by certified public accountants employed by Modern by dividing the net total of the additions and deductions made in the regular course of the business of Modern after the date of the last such agreement on the books of Modern to and from the surplus of Modern as stated on the books of Modern as of the date set forth in such agreement by the number of shares of Stock issued and outstanding at the time of the exercise of the option (excluding shares of Stock or voting trust certificates owned by Modern) less any percentage thereof as provided in any applicable subparagraph. Meetings of the holders of shares of Stock shall be called at least annually to consider the revision of such agreement. A new purchase price fixed in any such revised agreement shall be effective hereunder until a further revision is made as provided herein.

(h) If an option shall be exercised by the Continuing Stockholders or by Modern, Modern shall do whatever is necessary to conclude the sale of the Stock for which an option is exercised, by delivering the shares

of Stock to the purchaser and by delivering to the seller the cash and notes deposited with Modern. If the option is not exercised as to all or any part of the shares of Stock deposited with it, Modern shall return such shares of Stock upon the expiration of the option period to the holder so depositing them.

(i) If Modern shall purchase any of the shares of Stock pursuant to the provisions of this agreement, the directors of Modern may authorize the purchase of all or any part of the said shares of Stock in the name and for the account of the employees of Modern and its affiliated corporations, if any, in the ratio of the number of shares of Stock then held by them to the total number of shares of Stock then issued and outstanding (excluding shares of Stock and voting trust certificates owned by Modern) upon such terms as the Board of Directors of Modern may from time to time approve, or at its option, if it has funds available for the purpose, Modern may purchase the shares of Stock for its own account and deposit them in its treasury, and may at its option resell from time to time any or all of such shares of Stock purchased for its own account to the employees of Modern and its affiliated corporations, if any, in the ratio of the number of shares of Stock then held by them to the total number of shares of Stock then issued and outstanding (excluding shares of Stock and voting trust

certificates owned by Modern), at such price or prices and upon such terms of payment as the Board of Directors of Modern may from time to time approve, or at the option of the Board of Directors, any or all such shares of Stock may be retired or cancelled in any manner provided by law.

(j) No holder of shares of Stock shall hypothecate or pledge any shares of Stock except under an agreement of hypothecation or pledge with the pledge containing the following provisions in the following sequence:

> "In the event of the death of the pledgor, or if he proposes to sell, transfer, or in any way dispose of any shares of Modern Teleservice, Inc. stock or any voting trust certificates issued therefor, or if a pledgor is employed by or associated with any competitor of Modern Teleservice, Inc. in any capacity pursuant to which he may derive some financial benefit, the other holders of shares of Modern Teleservice, Inc. stock or any voting trust certificates issued therefor and the said corporation shall have the same right to purchase any or all of the pledged shares of stock or voting trust certificates as they or it would have had if the shares of stock or voting trust certificates had not been pledged and to make payment therefor to the pledgee or any party presenting the shares of stock or voting trust certificates properly endorsed for transfer. The provisions of the agreement of October 15, 1956, relating to the rights of the holders of shares of Modern Teleservice, Inc. stock and of any voting trust certificates issued therefor and of the said corporation to purchase such shares of stock or voting trust certificates and the price to be paid therefor and the terms of payment thereof, are on file in the principal office of the corporation in the Borough of Manhattan, City and State of New York, and the pledgee has notice thereof.
>
> "In the event that the pledgor shall be in default under the pledge, the other holders of shares of Modern Teleservice, Inc. stock and any voting trust certificates issued therefor and said corporation shall have options, respectively, upon the terms and conditions as to priority of

option and time of exercise of option as set forth in paragraph 1 of the said agreement, commencing after the expiration of fifteen (15) days from the time written notice of such default is served upon said corporation by the pledgee, to take over the shares of stock or any voting trust certificates pledged and the debt to secure which the shares of stock or any voting trust certificates have been pledged, or in the case of such other holders, the pro rata portion of such shares of stock or any voting trust certificates and debt determined in accordance with the provisions of said paragraph 1 upon payment to the pledgee of the amount then owing on said debt, and no sale shall be made by the pledgee under said pledge until such options have expired; provided, however, that the amount payable to the pledgee upon the exercise of either of the options hereby granted shall not exceed the purchase price at which such shares of stock or voting trust certificates could be purchased if offered for sale by the pledgor under the provisions of said paragraph 1.

"No other provisions in the hypothecation or pledge shall in any way affect the rights given in the preceding paragraphs, and by accepting the pledge the pledgee agrees to carry out and be bound by the provisions of the two preceding paragraphs and of the said agreement."

If any party entitled to exercise any such option to take over any shares of Stock which shall have been pledged or hypothecated and the debt to secure which such shares of Stock have been pledged shall have exercised such option, such party, at any time after the expiration of sixty (60) days after written notice mailed to the holder of record of the pledged shares of Stock at his address as shown on the books of the corporation or the books of the voting or other trustees, may purchase said shares of Stock by paying or tendering to the pledgor the difference, if any, between the amount paid in taking over said shares of Stock and the price which such party would be required to pay to purchase said shares of Stock in the case of a sale by the said pledgor under the provisions of sub-paragraph (a) of paragraph 1 hereof; provided, however, that at any

time prior to such purchase of said shares of Stock the said pledgor may redeem said shares of Stock by paying the amount paid to the pledgee in taking over said shares of Stock, together with interest thereon at the rate of five (5%) per cent per annum from the time of taking over said shares of Stock to the time of payment. If any party shall have exercised his or its option to take over shares of Stock, which shall have been pledged or hypothecated and the debt to secure which the shares of Stock have been pledged, such party shall, in addition to any rights herein granted, be subrogated to all the rights of the pledgee of said shares of Stock.

(k) All shares of Stock and all voting trust certificates now or hereafter issued and delivered to stockholders or holders of voting trust certificates shall have written, stamped or printed upon the face thereof the following statement:

> "This certificate is transferable only in accordance with the terms of an agreement dated October 15, 1956, between Modern Teleservice, Inc. and all its stockholders and all the holders of voting trust certificates for its stock, now on file with Modern Teleservice, Inc. at its principal office in the Borough of Manhattan, City and State of New York, and upon proof of compliance therewith."

No transfer of shares of Stock shall be recorded upon the books of Modern or any trustee unless effected in accordance with the provisions of this agreement. Each holder of shares of Stock shall be charged with notice of the provisions of this agreement and shall by receiving shares of Stock be deemed to assent to and shall be bound by all the provisions of this agreement.

If, for any reason whatsoever, any party to whom a sale or transfer has been made in breach of any of the provisions of this agreement, shall claim or establish ownership of or interest in any

shares of Stock, such shares shall thereupon become subject to redemption or purchase at any and all times thereafter, whether in the hands of such party or any subsequent transferee, immediate or remote, upon the same terms and conditions as set forth in subparagraph (a) of paragraph 1 of this agreement.

Modern and the voting trustee may, separately or concurrently, withhold any dividends or refuse to permit the exercise of any right with respect to any shares of Stock transferred in violation of the provisions of this agreement, or in regard to which there has been any default in notifying Modern of the holder's desire to transfer his Stock in order to give the party entitled thereto an opportunity to exercise his or its option to purchase, or any default in the delivery of the shares of Stock after notice of election to exercise any option to purchase has been given.

The term "employee", as used in this agreement, shall be deemed to include salaried officers. The term "affiliate company", as used in this agreement, shall be deemed to mean any company, a majority of whose outstanding shares of equity stock shall be owned by Modern or by Certificate Holders. The term "equity stock", as herein used, means the outstanding class or classes of shares entitled, upon liquidation of a company, to the final distribution of all assets remaining after the payment and discharge of all obligations and after the payment and distribution to all classes of shares entitled to priority in the distribution of assets. The term "holder of shares of Stock", as used herein, shall be deemed to include the holders of any voting trust certificates or other certificates of interest covering shares of Stock.

2. Each Certificate Holder hereby approves and ratifies the making of this agreement on behalf of Modern and authorizes and directs (1) the directors and officers of Modern to do any and all acts necessary or advisable to carry out the provisions of this agreement to be performed by Modern to the extent that Modern can lawfully do so, and (2) the trustee under the aforesaid voting trust agreement to give his consent as stockholder of Modern (a) to any action of Modern or its directors or officers in the purchase of shares of Stock or voting trust certificates pursuant to the provisions hereof, and (b) if in the opinion of counsel for Modern such action should be necessary, to the retirement or cancellation of shares of Stock acquired pursuant to the provisions hereof and to the reduction of the capital of Modern in order that Modern may have sufficient surplus for the purchase of such shares of Stock or voting trust certificates.

3. If Modern shall acquire any voting trust certificates hereunder, Modern may, for the retirement or cancellation of the shares of Stock represented by such voting trust certificates, obtain from the voting trustee the shares of Stock represented by such voting trust certificates, whereupon the voting trust agreement shall be deemed amended so as not to be applicable to such shares of Stock.

4. Each present or future holder of shares of Stock shall execute and deliver any and all additional written consents and authorizations necessary or advisable in the opinion of Modern's counsel in connection with any purchase or retirement of shares of Stock or voting trust certificates as aforesaid, to enable Modern to purchase shares of Stock or voting trust certificates as herein provided.

5. To the extent that the provisions hereof may conflict with those of the said voting trust agreement, this agreement shall be deemed an amendment of the said voting trust agreement.

6. The restrictions on the sale, transfer or other disposition of shares of Stock and the options provided for in paragraph 1 hereof shall terminate October 14, 1966, except that the options under subparagraph (f) of paragraph 1 hereof to request Modern to purchase shares of Stock shall continue in effect for the full period of three (3) years from the date of the death of a holder referred to in subparagraph (f), provided such deceased holder shall die on or before October 14, 1966.

7. This agreement may be executed in several counterparts, each of which when executed by any of the parties hereto shall be deemed to be an original and such counterparts shall constitute the one and the same instrument.

IN WITNESS WHEREOF, MODERN TELESERVICE, INC. has caused these presents to be executed and its corporate seal to be hereunto affixed by its proper corporate officers and the several individuals have hereunto set their hands as of the day and year first hereinbefore mentioned.

MODERN TELESERVICE, INC.

By S/ J. R. Ritenour
President

ATTEST:

S/ E. N. Cox
Secretary

S/ Frank H. Arlinghaus

S/ H. W. Davidson

S/ William H. MacCallum

S/ H. H. Eberle

S/ Anna Marie Schlereth

S/ H. W. Boga rds, Jr.

AGREEMENT made as of this 25th day of June, 1959, between MODERN TE[illegible]SERVICE, INC., a New York corporation, with an office at 219 East 44th Street, New York 7, New York, hereinafter referred to as "Modern", and each of the undersigned holders of voting trust certificates for capital stock of Modern, hereinafter referred to collectively as the "Certificate Holders",

W I T N E S S E T H :

WHEREAS, the Certificate Holders are the holders of voting trust certificates for shares of the capital stock of Modern issued under a voting trust agreement dated October 15, 1956, and

WHEREAS, the parties have heretofore on the date of October 15, 1956 entered into an agreement providing for options with respect to the sale, transfer or other disposition of any shares of the stock of Modern Teleservice, Inc., and

WHEREAS, the parties desire to amend the said agreement,

NOW, THEREFORE, in consideration of the premises and of other good and sufficient consideration, the Certificate Holders, each for himself and not for the others or any of the others, agree with each other and with Modern and Modern agrees with the Certificate Holders and with each of them, as follows:

1. The said agreement is hereby amended to add a new paragraph 8, reading as follows:

(a) A holder of stock as of June 25, 1959, hereinafter referred to as the "Original Transferor", may make a gift of any or all of the Stock of the Original Transferor to a spouse, descendant or custodian for an infant descendant of the Original Transferor without first offering to sell such stock to Modern or the other holders of Stock of Modern.

(b) A transferee of Stock from an Original Transferor, as herein permitted, pursuant to the preceding sub-paragraph (a), may transfer all or part of such transferred stock to a spouse, descendant or custodian for an infant descendant of such Original Transferor provided such transfer shall be without consideration.

(c) Any Stock transferred as hereinbefore provided shall remain subject to the provisions of this agreement with the same force and effect as if a permitted transfer under this paragraph had not been made, except that a transferee to whom a transfer has been made as permitted in this paragraph shall have with respect in such transferred Stock whatever rights the Original Transferor or his estate would have if then the holder of such Stock.

2. Except as herein amended the said agreement of October 15, 1956 shall continue in full force and effect.

IN WITNESS WHEREOF, MODERN TELESERVICE, INC. has caused these presents to be executed and its corporate seal to be hereunto affixed by its proper corporate officers and the several individuals have hereunto set their hands as of the day and year first hereinbefore mentioned.

MODERN TELESERVICE, INC.

By S/ J. R. Ritenour
President

ATTEST:

S/ E. N. Cox
Secretary

S/ Wm. H. MacCallum

S/ H. H. Eberle

S/ Anna Marie Schlereth

S/ F. H. Arlinghaus

S/ Harry W. Bogaards Jr.

AGREEMENT made as of this 1st day of May, 1962, between MODERN TELESERVICE, INC., a New York corporation, with an office at 219 East 44th Street, New York 7, New York, hereinafter referred to as "Modern", and each of the undersigned holders of voting trust certificates for capital stock of Modern, hereinafter referred to collectively as the "Certificate Holders",

W I T N E S S E T H :

WHEREAS, the Certificate Holders are the holders of voting trust certificates for shares of the capital stock of Modern issued under a voting trust agreement dated October 15, 1956; and

WHEREAS, the authorized capital of Modern is now 5,000 shares of capital stock without par value; and

WHEREAS, the outstanding capital stock consists of 2,940 shares; and

WHEREAS, Modern and the Certificate Holders have entered into an agreement dated October 15, 1956 providing for restrictions on and options with respect to the sale, transfer or other disposition of shares of the stock of Modern and voting trust certificates issued therefor; and

WHEREAS, employees of Modern have requested that voting trust certificates for shares of Modern be made available to them so that they may as holders thereof share in its growth; and

WHEREAS, it is the view of the parties that employees of Modern who are making and can continue to make substantial contributions to the growth of Modern should be permitted to purchase voting trust certificates for stock of Modern; and

WHEREAS, before they can do so the aforesaid agreement of October 15, 1956 must be amended to permit such purchase and in other respects as hereinafter provided,

NOW, THEREFORE, in consideration of the premises and of other good and sufficient consideration, the Certificate Holders, each for himself and not for the others or any of the others, agree with each other and with Modern and Modern agrees with the Certificate Holders and with each of them, as follows:

1. The purchase price in paragraphs 1(a) and 1(e) shall be reduced by only ten per cent (10%) instead of thirty-three and one-third per cent (33 1/3%) as now provided. The option to Modern shall only be for all of the shares of Stock offered, which the Continuing Stockholders fail to purchase under the option given to them, unless the selling holder is willing to sell less than all, in which event it shall be for such number the selling holder is willing to sell.

2. Paragraph 1(a) shall be amended by adding at the end thereof:

> "Anything herein to the contrary notwithstanding any holder of shares of Stock including without limitation any donees of any holder may transfer Stock to employees of Modern at any time or times and for any consideration and without compliance with the provisions of paragraph 1(a). For the purposes hereof the term 'employees' shall include directors of Modern. The Stock owned by each such transferee shall be subject to the provisions hereof with the same force and effect as if such transferee were one of the original parties hereto."

3. The first sentence of Paragraph 1(f) is amended to read as follows:

"The estate of a deceased holder who was either a holder of shares of Stock as of the date of this agreement or an employee of Modern at the time such holder acquired his shares of Stock and deceased holder's spouse, parents, descendants and trustees to whom shares of Stock were transferred by such estate as permitted in subparagraph (c) hereof, may elect to request Modern by written notice to it to purchase all or any part of such shares of Stock owned by the estate or transferred to them pursuant to subparagraph (c) hereof at the purchase price determined as hereinafter provided and upon the terms of payments as hereinafter provided in this subparagraph."

4. The last sentence of Paragraph 1(f) is amended to read as follows:

"At Modern's sole election Modern instead of making a full cash payment may give its promissory notes for seventy-two per cent (72%) of the purchase price, payable in forty-eight (48) equal monthly installments commencing on the 1st day in January of the succeeding calendar year with interest at the rate of six per cent (6%) per annum with the right in Modern to prepay such notes in full or in part at any time on or after the date of the maturity of the first of such notes."

5. In place of Paragraph 1(g) there shall be substituted the following:

"(g) The purchase price to Modern of a share of Stock and of a voting trust certificate issued therefor exclusive of any discount at a stated date shall be determined for the seller and Modern by a certified public accountant employed by Modern on the following basis:

(1) Total -

(i) Twenty (20) times the average dividends paid by Modern during the preceding five (5) calendar years;

(ii) Ten (10) times the average earnings of Modern during the preceding five (5) calendar years as reported for Federal Income Tax purposes, but after the deduction of such taxes (if such income or taxes have been adjusted with the Internal Revenue Service in the interim, such adjusted figures shall be used);

(iii) The book value of all of the outstanding shares of Stock at the end of the

preceding calendar year as determined by Modern's accountant.

(2) Divide one third of the total of the foregoing three items in (1) by the number of currently outstanding shares of Modern.

The purchase price per share as aforesaid shall be the amount found as above or the book value per share of Stock at the end of the preceding calendar year, whichever is the greater, as certified by Modern's accountant.

Appropriate adjustments in accordance with good accounting practices shall be made by Modern's accountant in the event of any change in the present number of outstanding shares of Modern Stock."

6. In the reference to the agreement of October 15, 1956 in the statement referred to in Paragraph 1(k) there shall be added "as amended".

7. As Paragraph 1(l) there shall be added:

"Except for employees who are presently parties to this agreement as Certificate Holders, an employee holder of shares of Stock who is such a holder at the time such employee retires as an employee of Modern - after attaining age 65, if a male, after attaining age 62, if a female and at any age if such retirement is due to total disability - or the estate of such deceased employee holder may elect at any time after such retirement or death to request Modern by written notice to it to purchase all or any part of the Stock owned by such employee at the time of the employee's retirement or death at the purchase price to Modern determined as hereinprovided without any discount and upon terms of payment as provided in paragraph 1(f), except that payment at the option of such retiree or deceased employee's estate shall be in cash, in an amount not to exceed $10,000, payable thirty (30) days thereafter."

8. Paragraph 8 as added by the amendment of June 25, 1959 is amended to include among the persons referred to as "Original Transferor" any and all employees of Modern who may acquire their Stock from an Original Transferor or a person referred to in paragraphs 8(a) or 8(b).

9. The restriction on the sale, transfer or other disposition of Stock and the option provided for in paragraph 2 hereof shall terminate October 14, 1966, except that the options under subparagraph (f) of paragraph 1 hereof shall continue in effect for the full period of three (3) years from the date of the death of a holder referred to in subparagraph (f), provided such holder shall die on or before October 14, 1966.

10. Certified mail may be used in lieu of registered mail for the giving of any notice under this agreement by any party to any other party.

11. The said agreement of October 15, 1956 as amended June 25, 1959 and as hereinbefore amended shall continue in full force and effect for the term thereof.

12. This agreement may be executed in several counterparts, each of which when executed by any of the parties hereto shall be deemed to be an original and such counterparts shall constitute the one and the same instrument.

IN WITNESS WHEREOF, MODERN TELESERVICE, INC. has caused these presents to be executed and its corporate seal to be hereunto affixed by its proper corporate officers and the several

individuals have hereunto set their hands as of the day and year first hereinbefore mentioned.

MODERN TELESERVICE, INC.

By S/ J. R. Ritenour
President

ATTEST:

S/ Elsie N. Cox
Secretary

S/ Frank H. Arlinghaus
Frank H. Arlinghaus

S/ William H. MacCallum
William H. MacCallum

S/ Howard H. Eberle
Howard H. Eberle

S/ Harry W. Bogaards
Harry W. Bogaards

S/ Anna Marie Schlereth
Anna Marie Schlereth

S/ Rosalie M. Arlinghaus
Rosalie M. Arlinghaus

S/ Rosalie M. Arlinghaus
Rosalie M. Arlinghaus
As Custodian for Alix A.
Arlinghaus, a minor.

S/ Rosalie M. Arlinghaus
Rosalie M. Arlinghaus
As Custodian for Frank H.
Arlinghaus, Jr., a minor.

S/ Rosalie M. Arlinghaus
Rosalie M. Arlinghaus
As Custodian for John G.

EXHIBIT B

E100

OFFICE COPY

May 1[illegible], 1967

Mr. J. Richmond Ritenour,
619 West 54th Street,
New York, New York.

Dear Rich:

In connection with the sale of the Modern Teleservice, Inc. stock of the Estate of Frank H. Arlinghaus I hereby authorize you to pay to DeWitt, Pepper & Howell, Attorneys, the sum of $80,000 to be used by them to satisfy the lien of the Internal Revenue Service for estate taxes. The payment to said attorneys may be deducted by you from the moneys due the Estate and such payment shall be deemed a payment in that amount to the Estate on account of the purchase price of the stock of the Estate.

Very sincerely,

Rosalie M. Arlinghaus

Rosalie M. Arlinghaus,
Executrix of the Estate of
Frank H. Arlinghaus

[illegible]ENDANT'S
Pepper
EXHIBIT
. DIST. COURT
D. OF N. Y.
B 10

EXHIBIT C

OFFICE COPY

tate of New York)
) ss.:
ounty of New York)

Sidney Pepper, being duly sworn, deposes and says:

1. He is of counsel for the estate of Frank H. Arlinghaus, eceased, and is acting for the executrix on the audit of the estate x return of the said estate.

2. He makes this affidavit with respect to the factors ich in his opinion affect the securities listed in Schedule B, as tems 1 and 2 respectively.

3. He is a director of Modern Talking Picture Service, Inc. d has been its counsel since 1937. He has been counsel for Modern leservice, Inc. since its incorporation. He believes that by reason f his connections with the said companies he is fairly well informed ith respect to the factors which may affect the value of those ecurities as of August 24, 1964, the date of the death of Frank H. rlinghaus.

4. Modern Talking Picture Service, Inc. was incorporated July 23, 1937, under the laws of the State of Delaware to take er certain assets of Electrical Research Products, Inc., a subsidiary the American Telephone & Telegraph Company. Decedent and his original llow shareholders were employees of Electrical Research Products, Inc., ich was then in the business of furnishing motion picture projection rvices in connection with the distribution of sound motion pictures r sponsors of public relation films.

The original common stock of the new company was made ailable to employees of the old company for $5,000. of which $2,00 e paid in cash on its incorporation, with the former owner taking r itself $100,000. of preferred stock, with voting powers. To insure

control, the preferred stockholder prepared a voting trust agreement for the common stock, with decedent as the voting trustee. The agreement was made on July 27, 1937.

The corporation did not prosper initially. It suffered from high overhead and operating costs.

The original business of the corporation when it was organized was the furnishing of projection services for the accounts of commercial interests desirous of bringing their business images to the attention of the public at meetings of organizations such as church, rotary, American Legion and other similar groups. A number of years later the corporation began to furnish the films to the borrowers as a part of its services. The vast amount of clerical work attendant upon that and in reporting the results to the owners of the films was performed for a fee of approximately $2.00 for each motion picture showing. At that rate the corporation was not prospering.

Following the rental of an early IBM data processing unit, the corporation was able to reduce its unit costs to show some profit.

With the aid of an officer who was active in the affairs of Massachusetts Institute of Technology (M.I.T.), the corporation was able to get the distribution rights to a series of teaching films produced by M.I.T. with funds provided by the Federal Government. In view of the fact that the purchasers and lessees of the films were schools paying therefor with monetary grants from the Federal Government, prices and profit margins were limited. This in substance was the beginning of the educational films division of the corporation.

Because of the service character of the business, manpower was a most important factor in the business. This called for a large number of employees with generous rates of compensation. As a service corporation the corporation could not develop any tangible product which

possessed saleable good will. What good will that it possessed as a service firm was subject to instant erosion by the loss of personnel or by their errors.

5. Modern Teleservice, Inc. was incorporated in 1956 under the laws of the State of New York. It was spun off from Modern Talking Picture Service, Inc. when it seemed desirable to set it up as an entirely independent organization. Its business was the servicing of "commercials" for television shows.

When it was incorporated a voting trust and a stockholders agreement virtually identical with that of Modern Talking Picture Service Inc. were entered into. It had the same stockholders and their stockholdings were proportionate to their holdings in the first company.

The business achieved a modest degree of prosperity with the advent of color television and by reason of increased billings for the more expensive color prints. The corporation does not produce any of the commercials, but does in some cases arrange for the procurement of duplicate prints of the commercials, which are shipped to television stations on a tight time schedule. A failure to get the right commercia to the right station at the right time may subject the corporation to damages for the loss of televising time.

Here also what good will it possesses is subject to instant erosion by the loss of personnel or by their errors.

6. In his opinion the following factors should be considered as having a depressing effect on the value of the voting trust certificat for capital stock of Modern Talking Picture Service, Inc. held by Frank H. Arlinghaus at the time of his death:

(1) Decedent was the president of the corporation from its incorporation to the time of his death; had a dominant hold on the said corporation through his majority ownership of its certificates and was responsible for all corporate decisions. This was officially recogni-d

the new management of the corporation.

The Board of Directors of the corporation at a meeting held on August 31, 1964, just after his funeral, adopted preambles and resolutions as follows:

"WHEREAS, Frank H. Arlinghaus, president, director and stockholder of this corporation, departed this life on August 24, 1964; and

WHEREAS, Mr. Arlinghaus assumed the direction and control of the corporation at its inception and through his energy, devotion, foresight and guidance brought the corporation to its present prosperous standing and eminence;

NOW, THEREFORE, be it

RESOLVED, that the directors on behalf of the corporation, hereby record their appreciation of the outstanding services rendered to the corporation for twenty-seven years by its president, Frank H. Arlinghaus, and their sense of the deep loss sustained by the corporation as well as by the directors, officers, employees and the corporation's licensees personally by reason of his passing; and be it

FURTHER RESOLVED, that the directors, officers, employees and licensees of the corporation extend to the family of Frank H. Arlinghaus their heartfelt sympathy with them over their loss; and be it

FURTHER RESOLVED, that a copy of these resolutions and the preambles be sent to Mrs. Frank H. Arlinghaus by the secretary of this corporation"

The new management of the corporation had an oil portrait of decedent made after his death which has been hung in the office of the corporation. In addition, a scholarship has been established in the field of Audio Visual Education in decedent's memory with the National Education Association.

(2) Upon his sudden and unexpected death the responsibility for corporate decisions passed into the hands of junior employees who had always looked to decedent for guidance, employees with no stock

holdings or at most insignificant holdings in the case of the few who were stockholders. It can be said that the business has continued on the momentum generated by decedent.

(3) The corporation's principal activities were in the distribution of free 16 m.m. motion pictures to schools, clubs, civic and social groups, etc., for exhibition in classes and at meetings and in the sale and lease of educational films to schools.

The advent of television has cut seriously into the number of meetings of civic, social and other groups where free sponsored motion pictures are acceptable as part of the meeting program. Television as a competing publicity media has taken an increasingly larger share of the publicity and advertising budgets of the corporation's customers. Schools with aid from the Federal Government have acquired a large audio visual library with a resulting reduction in their need to borrow films from the corporation to supplement their own film libraries. If the existing pessimism among business men continues, there is a strong liklihood that the budgets to pay for free film distribution will be substantially reduced. The income from the sponsored free film division has been largely tied to our national prosperity. In a service operation compensation to employees is a major cost. The compensation of the corporation's employees has been rising substantially even beyond the national pattern because an inability to retain the services of its trained personnel could be disastrous to a service corporation such as this corporation.

The educational film division markets films which have been produced by non-profit corporations under the sponsorship of universities with funds provided by the Federal Government. Those films are marketed to schools which acquire them with educational grants from the Federal Government. How long Congress with an impending recession will continue to appropriate funds for that purpose is anyone's guess. Certainly its

recent action in cutting back funds for aid to the underprivileged is an indication of what it may do when education appropriations come before it for authorization. The expenditure of Federal aid to education funds in 1965 was almost negligible. Moreover, the corporation was faced with strong competition in that field from McGraw Hill, Encylopedia Britannica and Coronet Films owned by Esquire. Its rank was only fourth in that field. Its distribution contracts were not long term and its current contracts were on a non-exclusive basis. Of the thirty series of films which it was distributing, two alone accounted for 85% of its income. There is every indication that when those two series have to be remade, the corporation, if it has any rights thereto, will have to share them with its competitors. Finally it should be noted that under the government subsidy grants the prices which may be charged by the corporation are fixed and not subject to increase by the corporation.

(4) The corporation's profits and growth in the five years preceding decedent's death are not outstanding. The last year's operating revenue increased largely because of increased charges for sponsored films made possible by an assumption by the corporation of mailing charges for the borrowed films in approximately the increased revenue. On the basis of an average dividend of 32¢ a share the reported price for an unlisted and unmarketable stock is fair and reasonable.

(5) The stock of the corporation is not listed. By reason of an agreement among stockholders dating back to 1951, the stock cannot be sold without offering it to the corporation at a formula price, which at the time of decedent's death was $9.66 a share. If the corporation were financially able to do so and had elected to buy the stock, the estate would have received only 28% in cash and the 72% balance in unsecured promissory notes payable over 48 months. Any such sale would by reason of Section 303 of the Internal Revenue Code necessitate the

sale of all of the stock of the estate and all attributed shares to avoid taxation of all the proceeds as ordinary income. The corporation is financially unable to purchase the stock for cash. It already has in debt to its bank on loans of $240,000. Accordingly any sale of the estate's stock to the corporation would have been an unsecured sale to a new management and free of any normal credit restrictions such as increases of compensation and dividends to the remaining employee shareholders. This has been a strong factor in motivating the retention of the stock by the estate.

(6) In 1964 and since then numerous listed stocks have sold for as little as 4 times earnings. Even today Chrysler stock can be had for 6 times earnings. With average per share earnings of approximately $1.00 a share, it would seem that the price at which the estate reported the value of the stock was reasonable, especially in view of the fact that the stock is unlisted and unmarketable and subject to all the other adverse factors as aforesaid.

7. In his opinion the following factors should be considered as having a depressing effect on the value of the voting trust certificates for capital stock of Modern Teleservice, Inc. held by Frank H. Arlinghaus at the time of his death:

(1) This corporation was a division of Modern Talking Picture Service, Inc. until it was spun off. After it was spun off, decedent still supervised the business of that corporation as chairman of the board of that corporation until his death. Since his death decisions have been made by the remaining officers who are not large shareholders and holders of insignificant amounts of stock.

(2) The corporation's business originates with advertising agencies for television sponsors. One agency provides better than 45% of the business. The loss of the goodwill of that agency could have

a very adverse effect on the corporation's business. There are no contracts with its clients for the corporation's services. It has been stated that its business is tied in directly with the ringing of its telephone. Furthermore, the corporation has to contend with a difficult labor union which has unsettled worker relations. The corporation has even on occasions been subjected to employee "errors" with resulting great damage claims. The increasing use of video tapes in place of film for television shows may have a deleterious effect on the business.

(3) At the time of decedent's death the corporation's business was largely in the lower volume black and white prints. It has since decedent's death, shifted to the higher volume color prints which enjoy lower profit margins. The corporation has lost most of the feature television film business which it enjoyed during decedent's life.

(4) As in the case of the other corporation, the corporation's business is closely related to the budgets of the television advertisers, which in turn are related to the country's prosperity. With a possible business recession in the offing, it is likely that the television commercials will be rerun at an increasing rate with a serious impact on the corporation's business of procuring new television commercials.

(5) As stated in the case of the other corporation, this corporation's stock is not listed. By reason of a stockholders agreement dating back to its incorporation the stock at the time of decedent's death could not be sold without offering the stock to the corporation at a formula price which at the time of decedent's death was was $124.00 a share. Although that agreement has run out, the corporation's stock is still not readily saleable. The estate still has a "put" to the corporation at $124.00 a share. As in the case of the other corporation

this corporation were financially able to comply with the "put" he estate would received only 28% of the "put" price in cash and the 2% balance in unsecured promissory notes of the corporation payable ver 43 months. Any such put would by reason of Section 303 of the nternal Revenue Code necessitate the sale of all of the stock of the state and all attributed shares to avoid taxation of all the proceeds s ordinary income. The corporation is financially unable to purchase ll the stock for cash. It is now and has always been in debt to its anker. Accordingly any sale of the estate's stock to the corporation ould have been an unsecured sale to an uncontrolled management and ree of any normal credit restrictions such as those preventing an ncrease of officer compensation and increased dividends to the re- aining shareholders. This has been a strong factor in motivating the etention of the stock by the estate.

(6) The corporation has been subjected to increasing competition in some cases from non-union firms with lower labor costs nd lower service prices. In fact individual film splicers with a an of film cement can easily undersell the corporation. The personal friendships of the president have been largely responsible for the etention of its business. The thought of what would happen, if his ervices were no longer available to the corporation has troubled the state. A sale of all of the corporation's stock to another corpora- ion has been suggested to the president. He has stated that he was nwilling to work for anyone else. The corporation has no contract or his services and cannot get one. Without his consent to a sale, t is not likely that the stock of the corporation could be sold.

To sum up, while the profits of this corporation have been increasing, the profit picture could change the other way more quickly than television viewers tire of programs.

In view of all these factors, it is respectfully submitted

that the valuations reported in the Federal estate tax return reflect the fair values of such securities as of the date of decedent's death.

Sworn to before me this
27th day of October, 1966.

Sidney Pepper

ELIZABETH L. GALPINE
Notary Public, State of New York
No. 30-5151300
Qualified in Nassau County
Certificate Filed in N.Y. Co. Clk's Office
Commission Expires March 30, 1968

EXHIBIT D

E113

CABLE: LESAVOCATS

DE WITT, PEPPER & HOWELL
ATTORNEYS AND COUNSELLORS AT LAW
120 BROADWAY, NEW YORK, N.Y. 10005
WORTH 4-4040

BENJAMIN P. DE WITT (1888-1965)
SIDNEY PEPPER
HARRY E. HOWELL
EDMUND M. COX

WASHINGTON, D.C. OFFICE:
1908 Q STREET, N.W.
(202) STERLING 3-3871

December 21, 1966

Mrs. Frank H. Arlinghaus,
Windmill Lane,
Rumson, New Jersey.

Dear Rosalie:

You have requested that I tape answers to some problems confronting you as executrix. It seems preferable that those answers be recorded on paper for our respective records and for availability to others to whom you have expressed a wish to give copies.

1. When do you have to pay the balance of the Federal estate tax?

The Federal estate tax was due on November 24, 1965. The additional tax assessment of $73,310.54 for which you executed a waiver will be billed to you shortly. I am confident that reasonable extensions of time for the payment of the additional assessment can be negotiated pursuant to Section 6161 of the Internal Revenue Code upon a showing that a prompt payment of the deficiency would impose undue hardship on the estate. We would argue in support thereof that the estate's assets consist principally of the shares of two corporations, for which there is no ready market and which may be saleable only at a sacrifice price.

2. What is the additional Federal estate tax assessment?

The original estate tax assessment based on the Federal estate tax return was $25,783.48 and was paid on its due date. The additional tax is $73,310.54. By reason of the additional tax the credit for State inheritance taxes has been increased from $877.94 to $8,059.25. That increase is reflected in the additional tax.

The additional tax is in part the result of an increase to $9.795 a share of the Modern Talking Picture Service, Inc. stock valuation from the $6.00 valuation reported in the estate tax return. That figure gives effect to the allocation to the stock of the insurance of Frank's life held by the corporation in the amount of $.845 a share. The agreed valuation is a reduction from the $10.53 at which it was initially valued by the Internal Revenue Agent on his audit. If you did not acquiesce in the valuation, he would have fixed the value at $10.849 a

share including insurance.

The value of the Modern Teleservice, Inc. stock has been increased to $190.625 a share from the $75.00 a share reported in the estate tax return. Those figures are based upon the outstanding stock prior to the 20 for 1 stock split made since Frank's death. It is a reduction from the $237 a share at which it was initially valued by the Internal Revenue Agent on his audit. If you did not acquiese in it, he would have fixed the value at $214 a share.

As I wrote you on November 23, 1966:

> "This year the Internal Revenue Service has decided to endeavor to close what it regards as a tax loophole, namely the transfer by a person such as Frank to his wife and children of securities over which he has what the Service regards as real control and the power to take away all the benefits of such transferred securities. Mr. Goldberg does not claim any precedent to warrant his action, but feels that Frank's case is a good one to make a test case out of. He has accordingly taxed Frank's estate with the valuations of the voting trust certificates transferred, in the case of MTPS $115,091.25 and in the case of Teleservice $117,954.30.
>
> I have argued that while Frank was the voting trustee he had to conduct himself as a fiduciary and could not, as a matter of law, exploit either or both of the companies for his personal benefit and that, therefore, he did not have control over the gifted voting trust certificates. As to some of the certificates gifted within the last three years prior to Frank's passing, we would have the burden of establishing that they were not made in contemplation of death. The argument that they were made to minimize income tax liabilities is valid as to the children, but not so valid with reference to the gifts to you personally. The amount involved with this aspect of the additional assessment is in the neighborhood of $35,000."

In this connection it should be borne in mind that the Agent finally excluded the residence and furniture from the taxable estate and allowed as deductions $3,500 of future expense in Schedule J of the estate tax return and tuition for one year for each child.

3. Can I contest the additional assessment?

Yes. You may file a refund claim for such part of the addi-

share including insurance.

The value of the Modern Teleservice, Inc. stock has been increased to $190.625 a share from the $75.00 a share reported in the estate tax return. Those figures are based upon the outstanding stock prior to the 20 for 1 stock split made since Frank's death. It is a reduction from the $237 a share at which it was initially valued by the Internal Revenue Agent on his audit. If you did not acquiese in it, he would have fixed the value at $214 a share.

As I wrote you on November 23, 1966:

> "This year the Internal Revenue Service has decided to endeavor to close what it regards as a tax loophole, namely the transfer by a person such as Frank to his wife and children of securities over which he has what the Service regards as real control and the power to take away all the benefits of such transferred securities. Mr. Goldberg does not claim any precedent to warrant his action, but feels that Frank's case is a good one to make a test case out of. He has accordingly taxed Frank's estate with the valuations of the voting trust certificates transferred, in the case of MTPS $115,091.25 and in the case of Teleservice $117,954.30.
>
> I have argued that while Frank was the voting trustee he had to conduct himself as a fiduciary and could not, as a matter of law, exploit either or both of the companies for his personal benefit and that, therefore, he did not have control over the gifted voting trust certificates. As to some of the certificates gifted within the last three years prior to Frank's passing, we would have the burden of establishing that they were not made in contemplation of death. The argument that they were made to minimize income tax liabilities is valid as to the children, but not so valid with reference to the gifts to you personally. The amount involved with this aspect of the additional assessment is in the neighborhood of $35,000."

In this connection it should be borne in mind that the Agent finally excluded the residence and furniture from the taxable estate and allowed as deductions $3,500 of future expense in Schedule J of the estate tax return and tuition for one year for each child.

3. Can I contest the additional assessment?

Yes. You may file a refund claim for such part of the addi-

share including insurance.

The value of the Modern Teleservice, Inc. stock has been increased to $190.625 a share from the $75.00 a share reported in the estate tax return. Those figures are based upon the outstanding stock prior to the 20 for 1 stock split made since Frank's death. It is a reduction from the $237 a share at which it was initially valued by the Internal Revenue Agent on his audit. If you did not acquiese in it, he would have fixed the value at $214 a share.

As I wrote you on November 23, 1966:

> "This year the Internal Revenue Service has decided to endeavor to close what it regards as a tax loophole, namely the transfer by a person such as Frank to his wife and children of securities over which he has what the Service regards as real control and the power to take away all the benefits of such transferred securities. Mr. Goldberg does not claim any precedent to warrant his action, but feels that Frank's case is a good one to make a test case out of. He has accordingly taxed Frank's estate with the valuations of the voting trust certificates transferred, in the case of MTPS $115,091.25 and in the case of Teleservice $117,954.30.
>
> I have argued that while Frank was the voting trustee he had to conduct himself as a fiduciary and could not, as a matter of law, exploit either or both of the companies for his personal benefit and that, therefore, he did not have control over the gifted voting trust certificates. As to some of the certificates gifted within the last three years prior to Frank's passing, we would have the burden of establishing that they were not made in contemplation of death. The argument that they were made to minimize income tax liabilities is valid as to the children, but not so valid with reference to the gifts to you personally. The amount involved with this aspect of the additional assessment is in the neighborhood of $35,000."

In this connection it should be borne in mind that the Agent finally excluded the residence and furniture from the taxable estate and allowed as deductions $3,500 of future expense in Schedule J of the estate tax return and tuition for one year for each child.

3. Can I contest the additional assessment?

Yes. You may file a refund claim for such part of the addi-

t onal assessment as you may wish to contest, but only after the assessment has been paid in full. The refund claim can only be sustained with respect to payments made by you within a period of two years prior to the date of the filing of the claim. If you wish to contest only the inclusion in the taxable estate of the gifted shares, you would have two years from the time of the payment of the final $35,000 of deficiency to do so. (This figure is only an approximation and is subject to a later exact calculation).

Before you decide to contest the assessment as aforesaid, you must consider whether or not such a contest will be to your advantage. By reason of the assessment you have gained a substantial cost basis for the stocks of the respective corporations for the determination of the gain on the sale of the stock holdings of the children and you. This stepped up cost basis from approximately zero will reduce the income taxes payable on such sales. If you prevail on any estate tax refund claim as herein discussed, you will have a cost basis of approximately zero on the gifted stock and substantial income tax to pay on any stock sold by the children and you.

In our discussion of a possible refund claim, we have not considered the possibility that the Internal Revenue Agent in his report which we are still awaiting, will also take the position that all gifts in the three year period preceding Frank's death are taxable to the estate as gifts in contemplation of death. On that basis gifts of 2,750 Modern Talking Picture Service, Inc. and 420 Modern Teleservice, Inc. shares made in the last three years preceding Frank's death could be includible in the taxable estate, even if we prevailed with respect to the gifts of 300 Modern Talking Picture Service, Inc. and 200 Modern Teleservice, Inc. shares which were made more than three years before Frank's death.

We might be able to exclude from the taxable estate the gifts to the children within the three year period on the ground that they were made to reduce income taxes and not in contemplation of death. The same argument with respect to gifts of 1,250 Modern Talking Picture Service, Inc. and 150 Modern Teleservice, Inc. shares to you might not be sustainable because Frank and you filed joint income tax returns.

Thus your refund claim might be good at best for only the gifts made before the three year period preceding Frank's death, i.e. 150 Modern Talking Picture Service, Inc. and 200 Modern Teleservice, Inc. shares plus the gifts of 1,500 Modern Talking Picture Service, Inc. and 275 Modern Teleservice, Inc. shares to the children in the three year period (The foregoing Modern Teleservice, Inc. shares are the shares before the Modern Teleservice, Inc. 20 for 1 split).

In any event we have at least two years to decide the question of filing and prosecuting a refund claim. Perhaps someone else will have contested in the courts this new procedure by the Internal Revenue Service. If that person prevails and the Internal Revenue Service acquiesces, you should prevail without litigation.

4. What effect with the assessment have on the New Jersey Inheritance Tax?

New Jersey requires the submission to it of a copy of the Federal tax assessment. It will then undoubtedly follow the Federal tax assessment. When it does, we can then consider a partial challenge of the inclusion of the gifted shares.

5. Where am I to get the money to pay the assessment?

You may get that money (1) by borrowing it, (2) from dividends and (3) by selling estate stock holdings. The problem with borrowing is that the loan must be repaid and you are only changing creditors. Dividends are subject to income tax and only the net after taxes is available. To pay the tax from the net dividends after taxes would take a number of years and alone might not be acceptable for the procurement of an extension of payment time from the Internal Revenue Service. Furthermore, you will need funds to pay an additional tax assessment to the State of New Jersey, which is not presently determinable.

It may be that a combination of all three sources might be satisfactory, but it seems that the sale of some stock is undoubtedly called for in the near future.

6. What stock may I sell?

The answer to this must be considered (1) from a contractual viewpoint, and (2) from a tax viewpoint, apart from economic considerations based upon the desirability of holding the stocks as investments, which I will not discuss.

(1)

The shares of both Modern Talking Picture Service, Inc. and Modern Teleservice, Inc. were subject to so-called "buy-back" agreements between the shareholders and the respective corporations. Those agreements were substantially identical except that the agreement with Modern Teleservice, Inc. expired by its specific terms on October 14, 1966. The Modern Talking Picture Service, Inc. agreement expires on May 31, 1971.

Although the agreement with Modern Teleservice, Inc. has terminated, the "put" or option hereinafter referred to nevertheless continues in accordance with paragraph 9 of the May 1, 1962 amendment thereto. The specific provision is as follows:

"9. The restriction on the sale, transfer or other disposition of Stock and the option provided

for in paragraph 2 hereof shall terminate October 14, 1966, except that the options under subparagraph (f) of paragraph 1 hereof shall continue in effect for the full period of three (3) years from the date of the death of a holder referred to in subparagraph (f), provided such holder shall die on or before October 14, 1966."

Both agreements contain restrictions on the transfer of the securities of the respective corporations and what has been characterized as a "put" in favor of the holder of a deceased shareholder's stock and his transferees to call upon that corporation to buy from the holders part or all of the shares held by such holder's estate and transferees. The estate, the children and you thus have "puts" covering all the shares of those corporations in those names. Those "puts" must be exercised by giving written notice to the respective corporations to that effect on or before August 24, 1967 and depositing the shares and stock transfer tax stamps with the respective corporations.

Even though both "puts" expire on August 24, 1967, it may be possible to negotiate with the respective corporations for an extension of time to exercise the "puts". Such an extension could be advantageous to both parties, but such an extension may be academic, if the Internal Revenue Service declines to grant an extension of time to pay the tax.

The "put" price is determined on the basis of the financial reports of the respective corporationsas of the close of the calendar year preceding the date of the exercise of the option. In the case of Modern Teleservice, Inc. that would be December 31, 1966, if the "put" is to be exercised in 1967. Modern Talking Picture Service, Inc. changed from a calendar year accounting period to a fiscal year accounting period ending June 30. It files its income tax returns for a fiscal year and no longer reports for a calendar year. Calendar year data is no longer available. I assume that the parties would agree that the formula should in the case of Modern Talking Picture Service, Inc. be determined as of the close of the fiscal year preceding the date of the exercise of the option. In any event that was the view of the corporation's accountants when they prepared a formula price computation for the officers of Modern Talking Picture Service, Inc. on August 12, 1965. Accordingly in the case of Modern Talking Picture Service, Inc. the "put" price would be determined as of June 30, 1966, unless the "put" is exercised after June 30, 1967 in which event it would be determined as of June 30, 1967.

The "put" price is determined by the corporation's accountants by adding up the following:

(1) Twenty times the average annual dividends paid during the preceding five calendar or fiscal years;

(2) Ten times average annual earnings during the

five preceding calendar or fiscal years as reported for Federal income tax purposes; and

(3) The book value at the end of the preceding calendar or fiscal year.

The foregoing total is then divided by three and then by the number of outstanding shares to arrive at the formula price per share.

As of August 24, 1964 the Modern Talking Picture Service, Inc. formula price based on June 30, 1964 figures was $9.66166 a share. That price did not include any part of the proceeds of the insurance on Frank's life held by the corporation in the amount of $.845 a share. That amount will undoubtedly be reflected in the book values as of June 30, 1965 and June 30, 1966, when they are determined.

As of August 24, 1964 the Modern Teleservice, Inc. formula price was $124.2989 a share before the 20 for 1 stock split or $6.22 a share for the present stock. I have been informally informed by Mr. Ritenour that as of December 31, 1965, that price would be approximately $13 a share for the present shares. With higher 1966 earnings the formula price as of December 31, 1966 should be higher.

Please note that if a "put" is to be exercised for all of the stock for which the put is good, the corporation may not be able to purchase all of the stock. The corporation laws limit a corporation's right purchase of its stock to the amount of its surplus. This is referred to in paragraph 2 (f) of the Modern Talking Picture Service, Inc. agreement and paragraph 1 (f) of the Modern Teleservice, Inc. agreement. The "put" may, therefore, be good only to the extent of the corporation's surplus. Before the "put" is exercised for less than all your stock and the stock of the estate and the children, you must consider the tax effects hereinafter discussed. If there should be insufficient surplus to purchase all of the stock, the unpurchaseable stock should first be sold to others, so that the remainder can lawfully be sold to the corporation without adverse tax effects as discussed below.

In selling to a corporation as aforesaid, if the purchase price is not in cash then not more than 30% of the purchase price should be accepted during the calendar year of the sale in order to qualify the sale as an installment sale for income tax purposes. This will permit a postponement of the payment of part of the tax to later years.

(2)

Section 302 of the Internal Revenue Code makes taxable as a dividend all payments to the extent of the corporation's surplus received from a corporation on account of the purchase by the corporation of its shares, if all the holdings of a seller and relatives - in your case you, the estate and the custodian accounts - are not sold. If all such holdings are sold, then the gain on the shares sold would be treated

capital gain and taxed at a very substantially lower rate.

An exception to the foregoing rule is that under Section 303 of the Internal Revenue Code shares may be sold to the corporation with capital gain taxes, if the amount sold is limited to the amount of the Federal estate and New Jersey inheritance taxes and funeral and administration expenses allowed as estate tax deductions. Some of your administration expenses were not claimed as estate tax deductions because it was more advantageous to claim them as income tax deductions. They are, therefore, to that extent not includible in determining the number of shares coming within the exception of Section 303.

The value of the stocks of both corporations would qualify for sale under Section 303 since both stocks have been valued at more than fifty percent of the taxable estate. This would be true even if we were successful on a refund claim as discussed above.

If you sold all of the stock of one corporation, you could still sell to the second corporation the limited quantity of the second corporation's stock permitted by Section 303 of the Internal Revenue Code. Any such sale to the corporation would be in addition to any quantity not sold to that corporation but sold to employees.

In selling less than all of one corporation's stock consideration should be given to the fact that stock amounting to less than control of a corporation is not as valuable as stock carrying control. In other words, a sale of a small part of your holdings in one corporation may well leave you with less than control.

Conflict of Interest

There have been some comments from directors of the respective corporations that as attorney for the corporations and for the estate I may be in a position where I must elect to serve either the corporations or the estate on questions where the interests of the estate do not coincide with the interests of the corporations. I agree.

Up to the present time there has been no question where the respective interests have been adverse and no such suggestion has been made by anyone.

If I were to urge you to sell or not to sell either stock or to negotiate an extension of the time to exercise the "put" beyond August 24, 1967, I might be subject to such criticism. Accordingly, I have refrained from making any such recommendations and must also refrain from negotiating the business terms of any extension. If the business terms of such an extension are agreed to, there should be no objection to my drafting an instrument on behalf of both parties embodying those business terms.

December 21, 1966

. Frank H. Arlinghaus

I believe that what I have said above has your general approval d, in any event, you intend to consult with others with respect to y sales.

Of course, you may have my views on which stock to sell, if ou wish them. I do not believe, however, that I am qualified to give ou any informed advice on the subject, but in that event I should ave to first advise the presidents of the respective corporations.

If I have not anticipated all the questions you have raised, I hall be glad to supplement this letter.

Very sincerely,

SIDNEY PEPPER

SP:cm

Copy to Mr. Clemens G. Arlinghaus

EXCERPTS FROM

EXHIBIT E

Q And then the company distributed films directly; is that correct?

A Yes, through company-owned offices.

Q Until March 1, 1951, your title remained Southeastern Division Manager?

A Director of Southeastern Division.

In other words, I was the major-domo of the Southeastern Division.

Q However it should be expressed, you retained that position until March, 1951?

A That's correct.

Q What happened in March of 1951?

A On March 1 of 1951, I was recalled to New York to form the TV Division of Modern Talking Picture Service.

Q Was that, in fact, formed in or around March, 1951?

A Yes.

Q And that became the Teleservice Division?

A No. It was the TV Division of Modern Talking Picture Service.

Q What was your position in the TV Division?

A Director.

Q And that Division had a nation-wide operation?

A It was developed into a national operation.

A The TV Division of Modern Talking Picture Service, Inc. was spun off and became Modern Teleservice, Inc.

I was elected President.

Q You were the President, without disruption, until your recent retirement?

A That is correct.

In addition to being President from October, 1956 to March 1st of 1969, I was also made, in addition to President, Chairman of the Board at the Board of Directors Meeting held on September 17, 1964.

Q And you remained Chairman of the Board until the acquisition of Sonderling by Teleservice?

A Yes, sir.

(At this point, a short recess was taken.)

Q When did you first meet Frank H. Arlinghaus?

A Sometime in the early part of 1942.

Q When did you first meet Rosalie Arlinghaus?

A Between September 1st of 1946 and January 15th of 1947.

Q What makes you choose those two dates?

A Because I did not meet her until after I became associated with her husband, Mr. Frank Arlinghaus, and it

scheduled on March 14, 1967, and present were: Harry Bogaards, John Lipsky, William MacCallum and Schlereth and R. Ritenour.

Mrs. Arlinghaus, individually and as Executrix and Custodian, was represented by proxy by Mr. Clemens Arlinghaus and Mr. Sidney Pepper.

Q Did they hold all of their proxies jointly, or did one of them have a proxy in one capacity and the other in the other capacity?

A I don't recall seeing the actual proxy, and I do not know how it was written.

Q Right.

A But I simply am going by the information from the minutes.

Q Yes.

A That brings me up to the letter, which I referred to as being issued on April 25, 1967, the tender offer by Mr. Lipsky and myself to all the stockholders to purchase one hundred percent of their stock holdings at a price of $15, such offer to expire May 12, 1967.

Q Was that offer conceived by you?

A Yes.

Q And you then proposed it to Mr. Lipsky?

A Well, I believe your question is, was that idea

of my recollection. ***

Q Who introduced you to him?

A He was referred to me by Mr. Carl Lenz of MTPS.

Q So we have now established, I take it, that your conversation with John Lipsky, at which you said, "This is my idea," took place sometime after the latter part of March; is that correct?

A Are you asking about my introduction to Mintz?

Q You said that your introduction to Mintz came before you submitted this proposal to Lipsky, and then you said that your introduction to Mintz came toward the latter part of March.

A Well, it came after the 14th of March.

Q So that your conversation with Lipsky that I have been quoting from must have been after the 14th day of March; is that correct?

A I believe the first discussion between John and myself as to what we could do, what steps we could take, occurred sometime after 2:00 p.m. on March 13, 1967.

Q But it did not necessarily occur during that day?

A Yes, it did occur after 2:00 p.m.

Q On that day?

A On the day of March 13, 1967.

***

everything was status quo.

Q And one of your other categories of questions was, "How seriously are you listening to approaches by outsiders?"

When you were asked that by Mr. Lenz, what did you tell him?

A I believe that if I so stated, it was not he asking me that; I was asking him that.

Q Yes. What outside approaches did you have in mind?

A We had only had one approach by an outside source, and this was almost a yearly event, even prior to the death of Mr. Arlinghaus, and that was from Mr. Chet Ross, President of Bonded Film Services, and as in the past, no formal offers or presentations were made by Bonded, as it was the agreed position between Mr. Arlinghaus and myself that a relationship or an association with Bonded would be of no benefit to the stockholders or to the corporation of Modern Teleservice.

Q Are you saying that this is what you told Mr. Lenz, or are you digressing now --

A I don't know that I ever told Mr. Lenz, as such, but he was aware of it.

Q And I take it, then, that you told Mr. Lenz of

***

made on the 14th.

Q Was it added after you wrote the first page?

A Apparently.

Q Do you recall what prompted the making of that note, that addition, I should say?

A I don't recall at this moment, no.

Q Who introduced you to Mr. Mozeile?

A As I recall, to the best of my recollection, I received a telephone call from Mr. Mozelle, asking if I would be kind enough to meet with him in his office to explore the possibility as to whether or not Modern Teleservice, Incorporated might be willing to consider an acquisition by Filmways.

Mr. Lipsky and I --

Q Well, you are getting ahead of the game now.

My question really was who introduced you, and I understand now that he introduced himself in a telephone conversation.

Do you know what gave him the thought that Filmways might buy Teleservice?

A To the best of my recollection, it came out during the meeting with Mr. Mozelle, that Mr. Seymour Mintz of Previews, Incorporated had suggested to him to make contact with us.

A I do not recall whether I mentioned the Filmways incident to Mr. Mintz when I approached him to possibly act in my behalf.

Q But at any rate, you did not mention it to him earlier?

A Not to my recollection.

Q Do you know whether Mintz expected to be compensated for his service in referring Filmways to Teleservice, assuming, now, that a deal should eventuate?

A No.

Q Do you remember your first meeting with Mintz?

A Yes.

Q Can you place it in time?

(Witness looking at document.)

A No, I cannot.

Q Was it in 1966?

A It could have been.

Q Could it have been in 1965?

A No.

Q Could it have been early 1966?

A No.

Q Do you recall the occasion?

A Do you mean, by your question, location?

Q Yes. Who, what, where, how.

J. R I C H M O N D *** R I T E N O U R, having been previously duly sworn by a Notary Public of the State of New York, was examined and continued to testify as follows:

DIRECT EXAMINATION

BY MR. JENSEN: (Continued)

Q Mr. Ritenour, you continue under oath; do you understand that?

A Yes.

Q Would you look at the last page or two of the last transcript, please.

(Witness so doing.)

Q Have you now done so?

A Yes, sir.

Q On those pages, you were telling us about a meeting with Mr. Mintz. You were unable to pinpoint the date of that meeting at the last session.

Can you do so now?

A I don't know. I didn't know that I was asked to pinpoint it.

The date I have here in my notes is October 19, 1966, a meeting with S. Mintz of Previews, Incorporated.

Q You are referring now to the notes that were marked last time?

the company and those concerned.

Q Did you tell Mr. Mintz that you were seeking buyers for the company, or did you tell Mr. Mintz that you were seeking financing for yourself so that you could buy the company, or did you tell him something different again?

A I don't believe that I spoke with Mr. Mintz about anybody but myself, because I was not authorized or directed or instructed by the Board of Directors to have such meetings.

Q Is it fair to say, then, that your purpose in talking to Mr. Mintz was to find out whether he would help you with financing so that you could acquire the company?

A I believe that would be a fair assumption.

Q When you testified last time, and I refer you to page 158, that you wanted his help in developing prospective buyers -- do you see it there at the bottom?

A Yes.

Q -- did you mean buyers from the then stockholders or buyers from you after you should have bought the stock?

A I don't recollect.

Q It could have been either or both; is that right?

A It could have been.

Q How did Mr. Mintz respond to your queries on these matters on this occasion?

some kind of working relations with Previews, Incorporated of Stamford, Connecticut, and through a Mr. Brown of Gray Associates, I was introduced to Mr. Harris Shapiro.

Q This was in 1967?

A Yes.

Q Anyone else or any company?

A May I ask what your question is rererring to?

Q Yes.

Did Mr. Mintz or Previews or Gray Associates refer anyone else or any company to you who might be interested in purchasing -- let's say, acquiring all or part of Teleservice?

A Not to my recollection.

Q And that introduction was what led to the meeting with Mr. Shapiro, Brown and Lipsky, about which you have previously testified; is that correct, Mr. Ritenour?

A To my best recollection, yes.

Q Where was the meeting held?

A In my office.

Q And on what date?

A My records indicate April 5th, 1967

Q Was that the first time you had met Shapiro?

A To the best of my recollection.

Q Was that the first time you met Brown?

A To the best of my recollection.

Q Can you tell us everything that you recall about that meeting.

A It was exploratory in nature, determining the status and position of Mr. Shapiro and what interests he had, and Lipsky and myself explaining the highlights of what we were attempting to accomplish.

Q The purpose of that meeting was not to explore ways of finding outside buyers for the stockholders' interests, was it?

A To the best of my recollection, and I so previously testified, the meeting with Brown, Shapiro, Lipsky and myself covered the possible financial arrangements whereby the tender offer could be made to the stockholders for all of their stock.

Q By you and Mr. Lipsky, or by others?

A By a syndicate headed by Mr. Shapiro.

Q During that conversation, was it contemplated that the stock would be taken in the name of you and Mr. Lipsky only?

A There were many conversations and many meetings at which --

Q I am talking about this particular meeting, Mr. Ritenour.

A To the best of my recollection, nothing definite was determined at the first meeting.

Q Was a suggestion made that other people acquire stock interests?

Was that subject matter discussed at all during that meeting?

A I do not believe so.

Q Is it fair to say, then, that that meeting was called to explore ways by which you and Mr. Lipsky might finance purchases of stock in the company in your own names?

A To the best of my recollection, the first meeting did not cover any specific details as to how financing could be accomplished.

Q That's not my question, Mr. Ritenour.

Let me try to make it clearer.

Was there an assumption made during that meeting as to who would take ownership of the stock?

A Not at the first meeting, no.

Q Were several possibilities contemplated at that meeting?

A I do not recall.

Q Please continue to give us your recollection of what transpired at that meeting.

A I do not recall specifically what happened at the

meeting.

Q You tell us all you remember about it, whether specific or not, please.

Would it be easier if we lumped the various meetings together so you don't have to worry about whether one thing happened at one meeting or another meeting? If that's easier, I will ask you: Give me the substance of what happened at the various meetings among you four people while you were formulating a proposal.

A To the best of my recollection, as a result of the first meeting, Mr. Shapiro inferred that he had several individuals from the Philadelphia and Wilmington areas that possibly would be interested in forming a syndicate whereby necessary financing would be arranged that would permit a tender offer be made to purchase all of the issued stock of Modern Teleservice, Incorporated for a price as agreed upon by the syndicate.

Q Do you recall anything more about what transpired at that meeting?

A Well, now, you point it down to a meeting. I am talking about numerous meetings.

Q I think the introduction to your answer pointed down to only one meeting, Mr. Ritenour.

MR. JENSEN: Will you read it back, please.

(The reporter read the penultimate answer.)

A (Continuing) The meeting was adjourned, and Mr. Shapiro would make contact with the gentlemen he had mentioned and establish a meeting date at which time the other gentlemen would be introduced to Mr. Lipsky and myself.

Q Did that happen at the next meeting between the four of you?

A To the best of my recollection, the next meeting was on April 10th, 1967, at which time a Mr. Stat and a Mr. Zinman, with Mr. Shapiro, met in my office and Mr. Lipsky and I were introduced by Mr. Shapiro.

Q Did Mr. Stat want stock?

A To the best of my knowledge, yes.

Q As the deal was finalized between you -- I am talking now about the syndicate agreement -- was Mr. Stat to get stock?

A To the best of my recollection, the syndicate was to acquire all of the stock as issued by Modern Teleservice, Incorporated and that a new corporation would be formed with stipulated percentage ownership by Mr. Shapiro, Mr. Stat, Mr. Zinman, Mr. Ritenour and Mr. Lipsky.

***

BY MR. JENSEN:

Q We can take it, then, that everything you said before about the April meeting applies now, instead, about the February meeting.

A It would appear, from this letter from Mr. Shapiro, that the first exploratory meeting was prior to April 21, 1967.

Q Apart from the letter and memorandum which were just marked, do you know of any writing in any form whatsoever which reflects the negotiations or terms of this agreement?

MR. O'KEEFE: You are referring to the agreement between the syndicate and Mr. Ritenour?

MR. JENSEN: Yes, sir.

Q (Continuing) The agreement which is Exhibit 36.

A I'll have to check my records.

Q Will you do that by next time, please? By that I mean, by the next session of this deposition.

MR. O'KEEFE: Yes.

MR. JENSEN: Thank you.

Q Did you ever disclose the terms contained in the agreement, which is Exhibit 36, to Mrs. Arlinghaus?

A I do not recall.

Q Do you have any reason to think that you did?

A No, I do not.

Q Can you go as far as to say that you know that you did not?

A I don't recall.

Q Same questions with respect to Clem Arlinghaus.

A To the best of my recollection, full disclosure was made to Mr. Clem Arlinghaus.

Q Of the terms of the letter-agreement, which is Exhibit 36?

A Yes.

Q When was that done?

A I do not recall.

MR. O'KEEFE: Sometime in April?

Q Your attorney suggests it was sometime in April; is that correct?

MR. O'KEEFE: I asked him, was it sometime in April.

Q Was it?

A To the best of my recollection, yes.

Q Do you recall where you were when you told him about it?

A I do not recall.

Q Do you recall who else was present?

A I do not recall.

Q Did you tell him about each and every term in that letter, and maybe you would prefer to have the letter in front of you before you answer the question.

A I do not recall whether I told him the full content of the agreement or gave him the highlights and the understanding of the syndicate position.

Q Please refer to the second paragraph in the body of the letter.

My question is: Did you tell Mr. Arlinghaus the other members of the syndicate had agreed to gift twelve and a half percent of the common stock to you and Mr. Lipsky?

A To the best of my recollection, the directors of the corporation, including Mr. Clem Arlinghaus, were advised that a syndicate --

Q Mr. Ritenour, answer my question directly, please.

Did you or did you not?

Yes or no, please, or, else, "I don't recall."

A Yes; I told them that John and I would have a stock interest in the new corporation.

Q Mr. Ritenour, did you tell Mr. Arlinghaus that the other members of the syndicate had agreed to gift twelve and a half percent of the common stock to you and

Mr. Lipsky?

Yes or no, please.

A I do not recall whether I told them how John and I were to acquire our position in the new corporation.

Q Did you tell Mr. Clem Arlinghaus that the other members of the syndicate had agreed, if you were successful in bringing about the deal, to gift to you twenty-five percent of the difference between the purchase price and 1.2 million dollars?

A I do not recall.

Q Did you ever compute the net cost to you of one share of the stock after the gifts referred to on the first page of Exhibit 36? And when I say "you," this time, I mean J. Richmond Ritenour.

A I don't understand your question.

Q Assuming that the transaction had gone through on the terms expressed in Exhibit 36, what would have been the average net cost to you of each share that you were to receive?

Do you know the answer to that, without computing it now?

A I do not.

Q Did you ever compute that?

A Not to my recollection.

syndicate was unable to come up with sufficient financing and, therefore, would be unable to consummate the closing.

Q Did anyone else speak?

A I don't recall.

Q Did anyone on behalf of the syndicate or on behalf of anyone else, for that matter, ask for an extension -- let me put it this way: ask for a postponement of the closing?

A To the best of my recollection, Mr. Stat asked, off the record, to Mr. Pepper if an extension of the closing date would be possible.

Q Did he suggest another date?

A Not to my recollection.

Q Did he give some reason for his request?

A To the best of my recollection, he felt he could arrange the proper financing.

Q Did he explain how he would go about it?

A Not to my recollection.

Q What was Pepper's reaction -- response, I mean?

A I don't recall.

Q Do you recall whether it was negative or positive?

A Negative.

Q Have you given us your recollection of the

***

AFTERNOON SESSION (1:40 P.M.)

DIRECT EXAMINATION

BY MR. JENSEN: (Continued)

Q Did the members of the syndicate have a meeting after the abortive closing meeting on June 9?

A No, sir.

Q Did you have any further dealings with any one of the members, excluding Ritenour and Lipsky?

A Only as necessary to finalize the agreement in the way of releases and so forth.

Q Would anyone have been entitled to a commission on that transaction if it had gone through, to your knowledge?

A Yes.

Q Who?

A Gray Associates.

Q Would that have been for their services in bringing you together with Mr. Shapiro?

A Yes.

Q Was there a written agreement to that effect?

A I do not know.

Q How much would they have been entitled to?

A I do not know.

Q With whom was the agreement entered into?

A I do not know, other than the relationship of

someone else?

A It was an outgrowth of discussions which John and I had on how we could attain a larger position in the corporation.

Q During what approximate period were those discussions had?

A June 9th and June 30th of '67.

Q Did you discuss this matter with anyone other than Lipsky?

A Yes.

Q With whom did you discuss it?

A Mr. Pepper, Mr. Charles Newton, Mr. Bill MacCallum, my wife. That's all I can recall.

Q With whom did you first discuss it among these four people?

A Mr. Pepper.

Q Do you recall when you first spoke with Mr. Pepper about this?

A No; I do not recall the exact date.

Q Was it shortly after June 9?

A Well, I don't know what you mean by "shortly."

Q Can you place it in time at all?

A (No response.)

Q Could it have been as early as the luncheon on

June 9?

A It could have been, yes.

Q Do you remember who was present when you talked about this with Pepper?

A Well, if it was at this luncheon, only John and myself were present.

At that time -- I believe in previous testimony and from Pepper's testimony there was a doily from the luncheon placed in the testimony, and at that luncheon, there were -- I cannot recall specifically what was said or what all was discussed, but this could very well have been discussed, not in detail, but as possibilities.

Q Did you have a number of conversations with Pepper about that between June 9 and June 30?

A Yes.

Q Let me ask you a blanket question, then, with respect to all of those:

Will you give us your total recollection of what was said by the three of you about that.

A During the discussions we had and kicking the whole idea about, John and I worked through and with Mr. Pepper, as counsel for the corporation and apparent attorney for the other stockholders, and using his background, knowledge and legal experience and knowledge as to

what would be an ethical, fair and legal plan to consummate the desire of John and myself to acquire more stock in the corporation.

Q Did Pepper suggest any plan?

A He did not originate or initiate any specific plan.

Q Did he make any suggestions for methods of proceeding?

A In the overall discussions, yes. He made and contributed to the final plan which was presented to the stockholders in a letter confirming discussions which Pepper had had with the stockholders on June 30, 1967.

Q Are you referring now to the letter, a copy of which has been marked Defendants' Exhibit F? (Handing to the witness)

A Yes.

Q Did anybody other than you, Lipsky and Pepper contribute to the formulation of that purchase plan?

A No, sir.

Q Can you tell me what Pepper's contributions were.

A (No response.)

Q If it's easier for you to recite the contents of the conversations you had, you may do that.

A I can't recall the conversations specifically,

A No, sir.

Q I mean to include persons who might not be involved, such as your secretary or another employee.

A No, sir.

Q What, precisely or in substance, did you say to Pepper when you brought up the matter of the ethics of the proposal?

A Nothing other than, was this an ethical approach to the problem which John and I were trying to finalize.

Q Did you ask him specifically about one or more features of it?

A John and I reiterated our desires to Mr. Pepper, and, from a legal point of view, asked Mr. Pepper whether he had any suggestions as to how our acquisition of stock could be accomplished.

Q Was that in the same conversation?

A I cannot recall whether this was the first of many conversations which we had after June 14th.

Q When you brought up with Mr. Pepper the question of the ethics of the proposal, did you ask him specifically about the ethics of the price formula in the proposal?

A I recall that the price formula was a suggestion by Mr. Pepper.

Q Do you recall, either precisely or approximately,

with the syndicate closing failing to be consummated.

Mr. Pepper did so attend, and a full, detailed explanation was presented to the Board by myself, and at that point, I do not recall which director proposed that John and I be authorized to acquire the services of a financial consultant to represent us in selling the assets of the corporation, and that each Director be given the right to suggest financial institutions for our consideration.

Q What did you do to carry out that mandate?

A I, personally, knew a gentleman with Smith, Barney, and caused a meeting to be scheduled for Mr. Lipsky, Mr. Pepper and myself to meet with Smith, Barney, explain our problem and ascertain whether or not they would be interested in representing us.

As I had not received any suggested recommendations for contact with other financial institutions from any of the other Directors, through negotiations between Mr. Pepper and Smith, Barney, a formal letter of understanding and agreement was reached between Smith, Barney and Modern Teleservice, Incorporated.

Q Do you have a copy of that?

(Witness handing document to Mr. Jensen.)

***

A They were all after -- Mr. McCandless was July 5th. Mr. Martin was June 26th. The others were after July 26th.

MR. JENSEN: Off the record.

(Discussion off the record.)

Q Did Smith, Barney establish contact with anyone else, or have you given us all of your contacts?

A To the best of my knowledge, I had no other meetings in conjunction with, or arranged for by Smith, Barney.

Q Apart from whether you participated in meetings, do you have any knowledge of any other approach made by Smith, Barney --

A Not to my knowledge.

Q -- or for Smith, Barney, for that matter?

A Not to my knowledge.

Q Among those that you mentioned to us before, I believe that A.E. Martin was the first one.

A Yes.

Q What is A.E. Martin?

A To the best of my knowledge, in layman's terms, he is a finder for possible companies acquiring one another.

Q Did you meet with him?

A Yes.

Q You took no position on it?

A The offer was made known to the Board of Directors, but the offer was withdrawn by Screen Gems before any action was taken, negative or positive.

Q When was it submitted?

A To the Board of Directors?

Q To the Board of Directors.

A At the meeting on September 13, 1967.

Q Did you submit it?

A Yes.

Q Did you make any recommendations with respect to it to the Board of Directors when you submitted it?

A No, sir.

Q The letter refers to a meeting with you on the preceding day.

Do you recall that meeting?

A That was the meeting, the last meeting I had with Mr. Karp, at which he returned to his office and drew up the proposal which he sent to me for me to have at the Board of Directors meeting the following day.

Q Were the terms of the proposal worked out during that meeting?

A I had nothing to do with his proposal. His proposal was unknown to me until it came into my hands.

had --

A Mr. Karp was fully aware that we were being represented by Smith, Barney and with Mr. Pepper, and I suggested that he work through these people. However, he said he preferred to handle the negotiations on a direct basis with me and would finalize our discussions with a suggested proposal.

Q Did he ever get that far?

A Did I ever get how far?

MR. JENSEN: Please read back the previous answer.

(The reporter read the penultimate question and the answer thereto.)

A Yes.

Q Were there any talks by anyone on behalf of Teleservice with Screen Gems after the September 13 letter?

A Mr. Karp called me on the phone the morning of September 20, 1967 and advised me that he was sending a telegram to me to the effect that the offer made by Screen Gems was being withdrawn.

Q Did he state a reason?

A No, sir.

Q Do you have a copy of the telegram?

A Yes.

Q May I see it.

(Witness handing document to Mr. Jensen.)

MR. JENSEN: Mark it, please.

(Western Union Telegram, dated September 20, 1967, addressed to J.R. Ritenour by Russell Karp, was marked Plaintiff's Exhibit 49 for identification, as of this date.)

Q In this telegram Mr. Karp asked you to call him so that he could explain to you.

A Yes.

Q Did you call him?

A I did.

Q What did he explain to you?

A He explained to me that it had come to his knowledge that through the efforts -- it had come to his knowledge that we were in negotiations with Fuqua, and because of this, they did not want to be negotiating at the same time that understandings had been reached with Fuqua.

Q Was that the extent of his explanation?

A Yes.

Q Were there at any subsequent time additional contacts with anyone at Teleservice by Screen Gems?

telephone understandings?

A To the best of my recollection, he had verbally presented to the stockholders, other than Lipsky and myself, the plan for Mr. Lipsky and myself to acquire stock from the other stockholders, and that they had verbally agreed to such a plan, and because of these conversations, Mr. Pepper then caused the plan to be put in writing and presented to the stockholders for their signature of acceptance.

Q Can you place those conversations or that conversation, whichever it is, in time?

A Sometime between June 9th and June 30th.

Q Is it your understanding that he was presenting to them a proposal about which you had informed him, or was it one that he was formulating?

A The plan was being formulated by Lipsky and myself, with Mr. Pepper giving us guidance and legal counsel.

Q After you had formulated the plan, did you reduce it to writing?

A I believe the June 30th letter reduced it to writing.

Q When I said "you," I meant you and Lipsky. Your testimony was it was formulated by you and Lipsky.

writing to Mrs. Arlinghaus.

Q You, yourself, did not?

MR. O'KEEFE: Did you send her any earnings reports of this company?

THE WITNESS: No.

MR. O'KEEFE: Off the record.

(Discussion off the record.)

Q From the time the June proposal was formulated by you and Mr. Lipsky until the time it was reduced to writing on June 30, 1967, did you make an attempt to speak with Mrs. Arlinghaus personally about the proposition?

A I do not believe so.

Q Is it fair to say that you relied on Mr. Pepper to talk to her about the proposition?

A Yes, as he was representing her.

MR. O'KEEFE: How about Clem Arlinghaus?

THE WITNESS: Well, Clem Arlinghaus on the Board of Directors.

Q Did you give Mr. Pepper any instructions as to what he was to tell her or how he was to go about presenting the proposal to her?

A No, sir.

Q Under the letter-agreement, Mr. Pepper was to buy shares for his wife at $10 also.

MR. JENSEN: Yes, we will leave a blank.

A _____.

Q Were the earnings of the Teleservice Division of Sonderling reported separately?

A I don't know.

Q I believe you have testified earlier that you continued in some capacity as an officer of Teleservice after its acquisition by Sonderling; is that correct?

A Yes, sir.

Q For what period of time did you continue as an officer of the Teleservice Division of Sonderling?

A From April 9th, 1968 through February 28th, 1969, unless that was a leap year and there were 29 days in February. The last day of February.

Q The last day of February, 1969?

A Yes.

MR O'KEEFE: The last day of February, 1969.

Q Was an annual financial report prepared for the Teleservice Division during that period of time?

A Yes.

Q Do you have a copy of that?

A No, sir.

Q Do you have available to you a copy of that?

A No.

Q Have you seen a copy of it?

A Yes.

Q Can you tell us what the earnings were for the fiscal period covered by that?

A No.

Q Can you approximate it?

A No.

Q Can you tell us whether it was more or less than for the preceding fiscal period?

A I do not recall.

Q What was the "as of" date of that financial annual report?

A December 31, 1968.

Q Was an earnings report prepared for the first quarter of 1968?

A Your question again, please.

MR. O'KEEFE: Was there an earnings report prepared for the first quarter of 1968. By that he means for the Teleservice Division.

A Yes; unaudited quarterly report, yes.

Q Do you have a copy of that?

A I do not believe so.

Q Will you check and see, please.

(Witness so doing.)

A I don't have any.

MR. O'KEEFE: (To the witness) I have never seen any of the Sonderling material in your file.

MR. JENSEN: This would not be during the Sonderling period.

A See, they didn't acquire until April 9th, so the first quarter of 1968 would still be Teleservice.

No, I do not have a copy of the unaudited quarterly report ending March 31, 1968.

Q Do you recall whether it showed better or decreased earnings than for the corresponding quarter of the preceding year?

A I do not recall.

Q Was an earnings report prepared for the second quarter of 1968?

A I don't know.

Q Can you say that you have never seen such earnings report?

A I have not seen one.

Q Have you been given any information about one?

A Not that I recall.

Q Was an earnings report prepared for the Teleservice Division for the third quarter of 1968?

A I don't recall.

Q It is your testimony, then, is it not, Mr. Ritenour, that you have no recollection of any of the earnings results for any of the quarters of 1968, nor for the year of 1968?

A Your question is, do I have the reports, or do I have knowledge of what --

Q Do you have any recollection as to what the earnings were or --

A Yes.

Q Tell me what they were, please. Tell me your recollection, please.

A My recollection is that 1968 was less in net profit than the year 1967.

Q Were there any special non-recurring charges charged against the earnings for 1968?

MR. O'KEEFE: Do you understand the question?

THE WITNESS: No, I don't understand.

MR. O'KEEFE: The witness doesn't understand the question.

Q Did Teleservice at one time employ a gentleman by the name of Mr. Hopson?

A Yes.

Q In what capacity?

A I would like to know which Mr. Hopson you are

referring to.

Q Let's leave Mr. Hopson for a minute to return to him later.

Did Teleservice at one time employ a gentleman by the name of Mr. Bliss?

A Yes.

Q In what capacity was Mr. Bliss employed?

A As a salesman.

Q Did there come a time when he resigned?

A Yes.

Q Did a Mr. Hopson resign at about the same time?

A What do you mean by "about the same time"?

Q About the time that Mr. Bliss resigned, at or approximately the same time.

MR. O'KEEFE: Do you know when either one of them resigned?

THE WITNESS: No.

MR. O'KEEFE: Do you recall?

THE WITNESS: Not by actual date, no; I do not recall.

MR. O'KEEFE: Do you recall that they both resigned about the same time?

THE WITNESS: Yes.

Q I don't happen to know the first name of

Mr. Hopson.

MR. O'KEEFE: Apparently there is more than one.

Q (Continuing) How many Mr. Hopsons did Teleservice employ?

A Two.

Q Would you give me the capacities in which the two Mr. Hopsons were employed.

MR. O'KEEFE: Give their first names, if you remember them, too so we don't have Mr. Hopson one and Mr. Hopson two.

A Mr. John Hopson was the first employee hired by the Los Angeles office of Modern Teleservice as a film technician.

Q Did there come a time when he resigned.

A Yes.

Q Do you recall when or approximately when that was?

A I do not recall.

Q And who was the other Mr. Hopson?

A Mr. Walter Hopson, brother of Mr. John Hopson.

Q What was his capacity?

A He was originally hired as a film technician by the Los Angeles office.

Q Did there come a time when he resigned?

952-7878

A Yes.

Q Did he resign at the same time as John?

A No.

Q Do you recall approximately when Walter Hopson resigned?

A I do not recall.

Q Would you tell me why Mr. Bliss resigned.

MR. O'KEEFE: If you know.

Q (Continuing) What reason did he give, if any?

MR. O'KEEFE: That's a better question.

A I am thinking of the word. Well, to go into his own business as a competitor of Modern Teleservice.

Q Did he actually do so?

A Yes.

Q What was the name of his business?

A I do not recall.

Q Do you know whether he is still in that business?

A To the best of my knowledge, he is.

Q Did Teleservice lose any accounts to Bliss?

A No.

Q Did John Hopson resign for a similar reason?

A No.

Q Did Walter Hopson?

A No.

BEAS REPORTING SERVICE, INC.

Q Do you recall the reason given by John Hopson for resigning?

A A difference of opinion of corporate policy.

MR. O'KEEFE: He was unhappy?

THE WITNESS: Unhappy.

Q Do you recall the reason given by Walter Hopson for resigning?

A To accept other employment by his brother, John.

Q In what line of business did John and Walter Hopson engage after their resignation?

A Competitive to Modern Teleservice.

Q What was the name of their business enterprise?

A I don't recall at this moment.

Q Are they still in that line of business?

A I do not know.

Q Did Teleservice lose any account to the Hopson enterprise?

A What do you mean by "enterprise"?

Q The business that they established.

A They did not establish a business.

Q Do you know who owned the business with which they became associated?

A That is the employer I cannot recall at the moment by name.

Q Did Teleservice ever lose any account to that employer, to the business run by that employer and with which John Hopson and Walter Hopson became associated?

A Not that I recall.

Q Where is the location now of the financial records of Teleservice as an independent corporation?

A I don't know.

Q Do you know what happened to them at the time of the closing of the Sonderling transaction?

A All papers and records became the property of Sonderling Broadcasting Corporation.

Q What is the present location of the correspondence files of Teleservice as an independent corporation?

A I do not know.

Q Were they surrendered also to Sonderling?

A Yes.

Q Were your correspondence records -- by that I mean, your records of your correspondence as Teleservice's President, including incoming letters and copies of letters that you mailed, turned over, lock, stock and barrel, to Sonderling?

A To the best of my knowledge.

Q Would you tell me, from what files did you produce the papers that you have produced during this

ALLCOURT REPORTERS, INC.

deposition?

A My own personal files.

Q Did you have a practice, while you were President of Teleservice, to keep copies for your own personal use of all, or at least some, of the correspondence you received and which you sent out as President of Teleservice?

A Yes.

Q Where is that file located now?

(Witness indicating.)

MR. O'KEEFE: The witness is indicating my files.

Q Does Mr. O'Keefe now have in his file your entire file of the nature that I just described?

A Yes.

Q Where is the present location of the records and files of Ritlip, Inc.?

A I do not know.

Q Is it correct to say that there came a time when Ritlip was dissolved?

A I do not know.

Q What was the last location of those records of which you had any knowledge?

A 619 West --

EXCERPTS FROM

EXHIBIT F

(Discussion off the record.)

(Photocopy of document on the letterhead of U.S. Treasury Department, Internal Revenue Service, stamp-dated January 17, 1967, addressed to DeWitt, Pepper & Howell, with attached documents headed "Line Adjustment - Estate Tax"; "Explanation of Adjustments," consisting of two pages; "Computation of Estate Tax," were marked collectively as Plaintiff's Exhibit 4 for identification, as of this date.)

BY MR. JENSEN:

Q You testified, I believe, that an offer by Mr. Ritenour to purchase Teleservice stock came to your attention early in 1967; is that right?

A I said about right after the date of the offer, which was --

Q What was the date of the offer?

A -- April 25th.

Q Are you referring to a written document now?

A Yes.

Q Do you have a copy present in this room, Mr. Pepper, of that document?

A No.

Q Do you have a copy anywhere?

A Yes.

alternatives available to Mrs. Arlinghaus.

Q Can you repeat for us what you said?

A Well, I stated that there were several alternatives; one, that they could reject Mr. Ritenour's offer and, perhaps, have to employ new personnel if there should be a defection from the organization. I didn't use the word "defection," but I mean, if anyone left.

I may interrupt myself: There were two vice presidents of the company who had left shortly before.

Q What were their names, Mr. Pepper?

A I don't know, but they had just left the company within a few weeks before to take other employment.

Q Yes.

A (Continuing) And the second alternative was that they could remain as minority stockholders instead of controlling stockholders; and the third is that they could make a counter offer to sell their stock at a higher price.

Q Did you mention any other alternatives?

A No, to the best of my recollection.

Q Who brought up the question of defections or possible defections from the company, Mr. Pepper, and I realize that you didn't use the word; the possibility of personnel leaving. Who brought up that possibility?

A I don't know how it came up, but I reviewed the discussions that we had been having for four hours, a long time, down in the concourse, and I summarized it by saying, "Now, there are three alternatives for you to consider," and it was left that way.

Q Did I hear you to say that the luncheon conference took four hours?

A No. We had been in conference from about 12:00 to 4:30; maybe three hours in the Rainbow Room and then an hour and a half in the concourse of the RCA Building.

Q Do you recall now your reason for mentioning the possibility of departure of personnel, or do you just remember mentioning it?

A Well, it had just happened in the company.

Q Was there any other reason for bringing it up, that you recall?

A No, but I think a competent lawyer should think of such a thing, and I thought that was part of my duty, to think of such a thing.

Q Do you recall whether your thinking of such a thing at that particular moment was prompted by something said during the Rainbow Room conference?

A I don't recall.

Q Have you told us now the sum total of your

A Who?

Q Stat's.

A No, but I may have a record of it.

Q Have you listed for us all of the participants of that meeting, Mr. Pepper?

A I don't recall who else came in and out of the room.

Q What transpired at that meeting?

A Well, they wanted an extension of time.

Q What was your response?

A Negative.

Q Did you know, before you came to the meeting, that an extension of time would be asked for or might be asked for?

A I didn't know -- I don't recall whether I knew or didn't know, but I anticipated that there would be a default.

Q What facts led you to anticipate that?

A I would assume that there was some communication from Mr. Ritenour.

Q When you got that communication from Mr. Ritenour did you take up with Mrs. Arlinghaus the question of whether an extension should be granted?

A No.

ALLCOURT REPORTERS INC

A The whole subject matter was included in a letter dated December 21, 1966 by me to Mrs. Arlinghaus, copies of which were given to Mr. Clemens Arlinghaus and to many others by Mrs. Arlinghaus.

Q Anything else?

A I have a memorandum that Mr. Ritenour stated he would discontinue seeking to get an acceptable price for the Teleservice stock.

Q Is this dated before 1967?

A Yes.

Q What's the date of that?

A December 19, 1966.

Q Is that a memorandum?

A Yes.

Q By you to yourself --

A Right.

Q -- or by Mr. Ritenour to yourself?

A By me to myself.

Q Anything else?

A I didn't look beyond these documents.

Q In other words, you have not --

A May I say this, that I have given your client copies of every document that I have sent out relating to her affairs.

since the original offer was net to my people, somebody would have to pay me a fee.

Q Which offer do you refer to when you say "the original offer"?

A The one of August 25, 1967; Plaintiff's Exhibit 13.

Q You are referring to an offer made after -- no; Mr. Pepper, you are referring to an offer made on April 25, 1967.

A April; I am sorry.

Q Correct?

A Yes.

Q For what was that fee to be paid to you?

A For my work in consummating the thing.

Q What thing?

A The sale.

Q The sale with Messrs. Ritenour and Lipsky proposed on June 9th?

A Yes.

Q I didn't understand your reference to the April 25th proposal.

Would you elaborate on that, please.

A Well, under the April 25th offer, as amended in a letter with Mr. Scharf, a later exhibit, the selling

ALLCOURT REPORTERS INC.

group were to get a net of $20 a share. That transaction did not include any compensation for me.

Q Compensation for what, Mr. Pepper?

A For acting as agent in the transaction.

Q It was my understanding of your previous testimony, Mr. Pepper, that you did not expect to be compensated for whatever services you rendered for anyone in connection with the attempted consummation of the April 25th offer.

Now what you are saying seems to assume that you were going to be compensated.

Would you clear that point up, please.

A Well, I had no specific agreement about the April 25th offer, as modified, and in this one, I felt that I ought to get some compensation.

Q Is it fair to say that while the April 25th agreement was still alive, you had an expectation of getting paid something for your services rendered in negotiating and consummating that agreement?

A I didn't negotiate that.

Q I think your testimony was that you were negotiating for a higher price. Maybe I am mistaken.

A Yes, I did get the higher price, but I didn't originate the offer and the offer had been accepted by all

the persons, other than Mrs. Arlinghaus and Howard Eberle, promptly.

Q Yes. Now my question was whether, while this agreement was pending, you had an expectation of realizing something from it.

A I had a hope.

Q From where did you expect to realize that compensation or hope to do so?

A I hoped that somebody would be generous and realize that I still had to make a living.

Q And whom do you include in the category of "somebody," Mr. Pepper?

A The selling group.

Q Anyone else?

A No.

Q Have you given us your total recollection of your meeting with Ritenour and Lipsky on June 9th after the closing meeting?

A Yes.

Q Did you make any memorandum of that meeting?

A Not that I recall.

Q Can you state that you do not have any memorandum of that meeting?

A I have looked for something; I haven't found

ALLCOURT REPORTERS, INC.

A I don't know, but Mrs. Arlinghaus was in constant communication with me, Mr. Eberle and Bogaards, and just how the plans originated, I can't at this moment state.

Q Do I understand you correctly when I understand you to say that Mr. Eberle, Mr. Bogaards and Mrs. Arlinghaus contributed to that exchange?

A I don't know. I was in touch with them.

Q What was your contribution to that exchange of ideas, Mr. Pepper?

A I do remember that the $7.50 price that Mr. Ritenour had originally proposed seemed to me to present some problems, because the stock, if sold at that price, would result in a loss.

Q To whom?

A To the Estate, the stock having been valued, after adjustment for a stock split, at pretty close to $10 a share.

Q For Estate tax purposes?

A Yes.

Q There was a 'put' price in effect at that time, wasn't there?

A About a little higher.

Q Would you say $16?

A That would probably be correct.

defer it.

Q Did you suggest to Mrs. Arlinghaus that she sell thirty percent to the Ritenour group instead of forty percent of her stock at any time?

A Not that I recall.

Q Did you advise Mrs. Arlinghaus as to the legality of the proposed sale?

A Specifically?

Q Specifically.

A No.

Q Did you form an opinion as to the propriety under the law of a purchase by Messrs. Ritenour and Lipsky at the price of $10 of forty percent of the Estate shares and all of Mrs. Arlinghaus' own shares?

MR. ROSEN: I will object to the form.

MR. JENSEN: What's wrong with the form?

MR. ROSEN: The use of the word "propriety."

MR. JENSEN: Change it to "legality."

A I thought it was legal.

Q Did you do any research on that question, Mr. Pepper?

A Not that I recall.

Q Did you advise Mrs. Arlinghaus as to the adequacy of a $10 payment?

ALLCOURT REPORTERS, INC.

A Well, I don't think we discussed the word "adequacy," but I pointed out to her that if she did not net at least $20 a share for all the holdings, the $20 being the amount that she wanted from Mr. Ritenour and his associates on June 9th, 1967, that in that event, she could re-acquire from Mr. Ritenour all the stock transferred by her pursuant to the authorization given by her to me on June 30, 1967.

Q Did you tell her anything else about the adequacy or bearing on the adequacy of the price of $10?

A Well, as I have already testified, she was to get better than $20 a share, and if she could not do at least better than $20 a share, the whole transaction was reversible.

Q I think that's what you said before, isn't it?

MR. ROSEN: Yes.

Q Have you given us now your entire recollection as to your discussions with Mrs. Arlinghaus about the adequacy of the price?

A Well, I am giving you my discussions with Mrs. Arlinghaus. We did not discuss adequacy, in quotes, as you have inserted it in your questions.

We discussed the contents of these letters.

Q Now, there came a time when the stock was

MR. JENSEN: I press for an answer.

MR. ROSEN: I direct him not to answer.

Q Was the possibility of the sale of Teleservice shares or assets discussed with anyone, to your knowledge, at any time after June 30, 1967?

A (No response.)

Q There was an eventual sale to Sonderling, and I take it it was mentioned to Fuqua.

Now, were there discussions with anyone else, to your knowledge, on or after June 30, 1967?

A Yes. Bear, Stearns --

Q Can we take them chronologically, Mr. Pepper.

A I can't.

Q All right.

A Bear, Stearns, a brokerage or banking firm, came in and wanted to buy Modern Teleservice, Inc.

Q What did they want to buy?

A We didn't get into a discussion of that.

I was informed by Mr. Ritenour that he would consider it a breach of faith with Fuqua Industries if we had any discussions with anyone else while the Fuqua deal was still pending.

Q As far as you know, no one received any indication as to what the possible purchase price would have been if

ACE-FEDERAL REPORTERS, INC.

that deal had gone through?

A If that deal --

MR. ROSEN: You mean Bear, Stearns?

MR. JENSEN: That's right.

Q Bear, Stearns, Mr. Pepper.

A No. We had no discussion. except to tell them that we were unable to negotiate with them. We had a commitment elsewhere.

Q Anyone else?

MR. ROSEN: You mean besides Fuqua and Sonderling?

MR. JENSEN: Sonderling and Bear, Stearns.

MR. ROSEN: And Bear, Stearns?

MR. JENSEN: And Bear, Stearns.

A I think Wometco was interested.

Q When did you first hear or see an indication that Wometco was interested?

A That was in the late fall of 1967.

Q How did you find out that Wometco was interested?

A Wometco was interested in Modern Talking Picture Service and then asked if they could get an opportunity to look into the Teleservice transaction.

Q Did anyone talk price with Wometco, as far as you know?

A Yes; I did.

Q Will you give us those conversations.

A Their price, I think, was in stock of their company in the amount of two million dollars, to the best of my recollection, based on the premise that Teleservice would have a net income of $200,000 for the preceding fiscal year.

Q Was that the best price you heard from them?

A It was not an offer; it was merely an indication that their yardstick for acquisitions was roughly ten times earnings.

Q Was anything else said about price in your conversations with them?

A Well, they wouldn't go beyond Fuqua's price.

Q Whom did you discuss this with; whom on behalf of Wometco?

A A chap named Wolfson; Dick Wolfson.

Q Is he an employee of Wometco?

A Executive Vice President, so I was told.

Q Was there a broker involved?

A There would have been, yes.

Q Who would that have been?

A That would be Harris Schapiro.

Q Were there any other prospective or possible purchasers during this period of time?

ALLCOURT REPORTERS, INC.

that they were ribbed about when we'd leave their office; "there goes the company, down the elevator"; or, we'd get into a cab; "there goes the company" again.

Q You are talking now about Messrs. Ritenour and Lipsky?

A Yes.

Q And you are referring to them as being the company?

A Right.

Q Because of their prominent position in the company?

A If I may refer you to my statements about IRS, I took the position that they were the company.

Q My question was: Was Mr. Lipsky present during that discussion?

A We had so many discussions along that line with other persons who were present, and so on, and Mr. Lipsky was in the California office of the company. Whether he was present in New York at that particular time, I can't recall. I do know he was in New York around June 9th and probably through the directors meeting on June 19th. What he did after that, I have no recollection.

Q Tell us, please, who were the other persons who were present during these discussions.

they wanted and they decided and demanded of me."

Did you make such statements, Mr. Pepper?

Would you like to read it? I will hand you the transcript from which I read. (Handing to the witness)

(Witness looking at transcript.)

Q Will you please, before you look at the rest of the transcript, will you please answer my question.

A Did I --

Q Make such statements or similar statements.

A What is it from the original meeting? Does she mean after the original?

What meeting are you talking about?

Q Let's forget about the occasion.

Did you at any time make such statements to Mrs. Arlinghaus or anyone else?

A Well, I could only put it on a basis of what I undoubtedly told her.

Q Well, thank you. That's satisfactory.

A (Continuing) That Mr. Ritenour and Mr. Lipsky were not under contract and that they were free to leave the employment of the corporation, in which event they could probably take certain key accounts with them, and there was one Chicago company, whose name escapes me right now, whose business comprised approximately 43 percent of

ALL COURT REPORTERS, INC.

agreement.

Why did you not want to participate in those negotiations?

A Well, I was counsel for the corporation and I was counsel for Mrs. Arlinghaus, as Executrix, and there had been voiced objections to my participating in any such negotiations.

Q Yes. Who voiced those objections?

A Well, they were voiced by the management of Modern Talking Picture Service, which had the identical problem, and I don't recall whether or not the management of Teleservice had spoken along the same lines.

Q Were you not also counsel for Mrs. Arlinghaus, individually, and as a custodian?

A Well, I've admitted in my Answer that I was counsel for them during the time of the Complaint.

I have not been paid by any of those persons.

Q Mr. Pepper, did you receive back all of the papers which you handed me earlier for marking?

A Yes.

Q I show you now a copy of Plaintiff's Exhibit 18, a memorandum said to be of Mr. Ritenour's, in longhand, with the addition of "Plus SP" in your longhand. (Handing to the witness)

A Yes.

Q (Continuing) And I ask you: When was the addition "Plus SP" made?

A Subsequently.

Q Subsequently by how much?

A I don't recall.

Q Who was present when you made that insert?

A I have no recollection of anyone being present.

Q It meant that you were to be paid something, didn't it?

A It meant, as I have heretofore testified, that the sellers were to get net sums.

Q How much were you to get if that deal came through?

A That was not discussed.

Q In other words, "Plus SP" means plus something undefined to Sidney Pepper; is that right?

A If there was going to be any deal and if any fees accrued to me, the sellers would not bear any part of it.

Q You are talking about legal fees, aren't you, Mr. Pepper?

A Yes.

Q And they would be legal fees not in negotiating that particular contract, but in selling Teleservice in its

ALLCOURT REPORTERS, INC.

entirety later on; isn't that right?

A No.

Q All right --

A This was a transaction between the stockholders and Mr. Ritenour and, presumably, Mr. Lipsky.

Q And your legal fees were for services incurred in bringing that particular transaction about?

A We didn't go into it.

All we were doing was to set up a guideline -- at least, what I was setting up was a guideline for myself, that my people were to get whatever amount was finally agreed upon, net.

Q Regardless of whether you went into it or not, Mr. Pepper, the words "Plus SP" meant something to you when you put it on there, and you have explained, as I understand it, that it meant that you were to be paid a fee for legal services.

Now, my question is purely and simply: Legal services rendered in what connection?

A If there was any sale.

Q You would render services in that connection and you would be paid something for that?

A That is, a sale to Mr. Ritenour.

Q Now, there was later on a sale to Mr. Ritenour,

not at $7.50, but at $10.

Did you render services and bring about that sale?

A This is the sale, what, June 30th?

Q Yes; the sale that actually took place.

A Yes.

Q Did you paid something for those services?

A No.

Q Did you at one time propose a purchase of Modern Talking Picture Service stock for $10 a share by various people, one of whom would be you or your wife?

MR. ROSEN: Could you repeat that question, please.

(The reporter read the pending question.)

MR. ROSEN: I think these questions have all been answered heretofore.

MR. JENSEN: Mr. Rosen, I don't think you are aware that we are talking about a different company now, Modern Talking Picture Service, Inc.

MR. ROSEN: If we are talking about Modern Talking Picture Service, which is another company, I will object, it is irrelevant, and direct him not to answer.

ALLCOURT REPORTERS, INC.

EXHIBIT G

E185

Pl/s. Ex. 11
for id. 2/24/69.

22 Elm Street
Tenafly, New Jersey

December 23, 1966

RECEIVED
DEC 27 1966
DEWITT FLYNN & HOWELL

To: Rosalie
Sid
Milton

To help pin point our discussions next Wednesday I have set down below some points I think we should direct our attention to, in the order of what appears to me must be decided fairly quickly, and what can wait until later.

(1) I think our immediate problem is to decide how to meet the additional tax assessment on the estate of some $73,300 plus about $4,700 interest to date.

- Should the estate borrow this somewhere?
- Should the estate exercise its "put" to either, or both, of the corporations?
- Should the estate exercise the "put" for all of its stock, or just enough to pay the tax, under the provision of law that permits such sale to the corporation without being taxed as ordinary income.
- If this approach is adopted which corporation?
- Or should the estate "put" some to each corporation?
- If a bit of each corporation were "put", to what level would that reduce the proportion of each corporation owned by the estate and related holdings?

(2) One question which doesn't seem to need immediate attention is whether or not to pursue an appeal of the inclusion in the estate of the stock that Frank had previously transferred. I think the only present question in this regard would be this - if such an appeal were successful how would the subsequent reduction in the value of the estate affect the eligibility of the stock of either or both corporations for sale to the company without being taxed as ordinary income? (I have tested this on both the "35% of Gross" and "50% of Taxable" tests, and it appears to me that both corporations would still be eligible.)

(3) Questions of the kind that I think can be laid aside for consideration later are questions of a possible sale of the stock of the corporations for the purpose of diversifying the assets of the trusts. My own feeling is that we should let matters of this kind remain quiet for a while, especially on Teleservice.

In order to assist in coming to some conclusions on point (1) I have made some rough calculations of the "buy back" price if the estate were to exercise its "put" in 1967, after the conclusion of the MTPS fiscal year on June 30. Using estimates for the remaining two months of 1966 for MTI, and assuming the rest of fiscal 1967 for MTPS to be at least as good as fiscal 1966, my calculations indicate that the formula price for MTI would be about $16 a share (book value being $11.22). However, the formula price on MTPS comes out to about $13.24 a share, with my estimate of book value as of June 30, 1967 being something over $16 a share. Under the formula the larger book value ($16) would then be the actual buy back price.(Incidentally, I notice the buy back agreement defines the formula price in terms of accounting results for calendar years; this was never changed when MTPS went to a July 1 to June 30 fiscal year, so it is not immediately clear how the buy back formula would be applied. But, if the price is "book value" as of the end of a year, as it appears it might well be, then the point becomes somewhat academic).

Based on these estimates, it would appear that if just enough stock were "put" to meet the tax deficiency of $73,000 plus about $4,700 interest to date ($78,000 in all) at a buy back price of $16/share, this would require the sale of 2,440 shares of each corporation, if split evenly between them. If 2,440 shares were so retired, the holding of the estate plus related persons would be reduced from 55.7% to 54.6% in the case of MTPS, and from 55.7% to 53.8% in the case of MTI. The estate holdings alone, assuming the 2,440 shares of each corporation were "put" from its holdings, would be reduced from 43.3% MTPS to 41.8% and from 34.6% MTI to 31.8%.

Merry Christmas,

Alan

EXHIBIT H

E188

Pltf. Ex. 21
for id. 3/19/70

July 1, 1967

To J. P. Ritenour,
John J. Lipsky and
Miriam J. Pepper

To induce you to deliver your respective promissory notes to the order of the estate of Frank H. Arlinghaus, deceased, on account of the deferred portion of the purchase price of the shares of Modern Teleservice, Inc. stock sold to you today, I agree to pay the Federal estate tax of the estate of Frank H. Arlinghaus in full, prior to the maturity of the said notes and agree that the said notes shall be subject to reduction prorata for any unpaid Federal estate tax as aforesaid which is now a lien on the shares sold by me to you respectively.

Very truly yours,

Rosalie M. Arlinghaus

Rosalie M. Arlinghaus,
Executrix

EXHIBIT I

1958 - E190 Ret. 77 -
Dip 30 - Contracts

Tennessee 29,040.00.

Damages 32,760. at 20

14. 655. 200.00.

- To date June 30 =>

4,000.00 Sh. Rosalie and
9.104.00 Estate
at 10.00 per share.
To date 30% in cash.
39.000.00 @ $3.00
prom notes at 6% 70
700

July 68 as earlier.
forfeit money.

children sue directly at 20 per sh.

Estate 20.360 00
4.000.00
24.360.00
seeing - 13.104
11,256 Estate left -

EXHIBIT
P/F
R&L (DEFT) B
ID
DATE 12/30/68 EVD RK.

24,360
20
487,200 @ 20
131,040 Sh sued
356,1160 Balance

Children 2,800,00

EXHIBIT J

E192

OFFICE COPY

June 30, 1967

Mrs. Frank H. Arlinghaus,
Windmill Lane,
Rumson, New Jersey.

Dear Rosalie:

You have signed and delivered to me my letters of June 30, 1967 to you. I agree not to release those letters until you notify me within the next day or two that the letters may be released. In any event, the letters will not be released by me until substantially similar letters have been signed by Howard Eberle, William H. MacCallum, Anna Herls, Harry Bogaards and Elsie W. Cox.

As and when the documents are released by me, I will deliver to you documents signed by Mr. Ritenour dated July 1, 1967 in the form shown to you.

Very sincerely,

SP:cm

agree to release of the
above letters - July 2nd 1967 -
Rosalie M. Arlinghaus

EXHIBIT K

(SEE EXHIBIT 7)

EXHIBIT L

DEFENDANT'S EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

Deft's Ex 7 for id 7/16/73

E195

MEMORANDUM

Memorandum of Agreement made this 7th day of June, 1968, in the City of New York, by and between Sidney Pepper, an Attorney practicing law under the name of De Witt, Pepper & Howell, in the City of New York, hereinafter called "Pepper" and all of the parties who have hereunto subscribed their names at the end of this instrument, (being the owners of approximately 86% of the outstanding stock of Modern Talking Picture Service, Inc.) hereinafter jointly called the "Stockholders."

WITNESSETH

Whereas, Pepper has heretofore performed numerous and varied legal services for the Corporation and the Stockholders consisting of negotiations, agreements, meetings, etc., with the view towards selling either the assets or the stock of the Corporation; and

Whereas, Pepper is presently holding certain Stock Certificates, books, records and papers belongin g to some of the STockholders and to the Corporation; and

Whereas, the parties hereto desire to settle their differences and enter this agreement;

Now, Therefore, in consideration of the mutual covenants herein contained, it is agreed as follows:

1. That heretofore Pepper has claimed approximately $15,000 in legal fees and disbursements against the Stockholders and the Corporation for which he has impressed a lien.

2. The Stockholders and the corporation have heretofore denied the validity of the said Pepper claim and lein.

3. There is a proceeding now pending in the Supreme Court, New York County under Index #8982/68 to require the said Pepper to deliver up the said Stock Certificates, books and papers upon which he has claimed a lien and the parties hereto now desire to adjust their differences.

4. Accordingly, the parties hereto agree that there shall be paid to Pepper, in full satisfaction of all claims for services rendered to the Stockholders and the Corporation, the sum of $75,000. The said sum is to be paid by the Stockholders only to Sidney Pepper pursuant to the executed assignment attached hereto and made a part hereof.

5. Upon receipt of the said $75,000, Pepper shall have no further claim of any kind or type against any of the Stockholders or the Corporation and the Stockholders on one hand and Pepper on the other hand shall fortwith exchange general releases, releasing each other, *

6. The Stockholders also warrant and represent that they are executing this agreement and the assignment of the $75,000 of proceeds of their own free will in the presence of each other and ~~of their~~ Attorney, William E. Kelly, Esq., who is present at the execution of this agreement.

7. In the event the Sherman Unger Group do not purchase the corporate stock of the Stockholders on or before June 24, 1968, then it is hereby agreed that the Stockholders and the Corporation, individually and jointly shall restore said Pepper to the same position he held prior thereto and shall cause themselves and the Corporation to return the stock and papers which he has this date delivered to them, so as to reinstate his lien.

* except for John J. Linsky and any collateral security for said notes any promisory notes executed by Mariam J. Pepper, and, in addition, Pepper agrees to execute and deliver a general release to Modern Talking Picture Service, Inc.

In Witness Whereof, the parties have executed this agreement this 7th day of June, 1968

Sidney Pepper

Sidney Pepper

MODERN TALKING PICTURE SERVICE, INC.

By

Stockholders

Anna Madia Schlyseth

Harry W. Borzage Jr

Wm. H. MacCallum

Alexandra MacCallum per W.H.M.

Elsa W. Cox

Rosalie M. Arlinghaus

Rosalie M. Arlinghaus, Individually, as Executrix under Will of Frank H. Arlinghaus and as Custodian for each and all of her children

Bertha D. Brophy

Richard W. Haney Jr.

Lauren D. Cook

Alix Ann Arlinghaus

Dated: June 7, 1968

We, the undersigned, hereby irrevocably convey, transfer and assign unto Sidney Pepper, His heirs, assigns and representatives, from the funds due and payable to us on the sale of our stock in Modern Talking Pictures Service, Inc., the sums of money set opposite our signatures, and we do hereby direct the Purchasers of the said stock, to pay the said sums assigned to Sidney Pepper to his attorney, Jack A. Rosen, as attorney for said Pepper, out of the first monies due to us on the said sale of our stock. We also direct that the said sums due to Pepper shall be paid simultaneously with the balance of the purchase price of the stock being paid to us. The purchasers referred to are the Sherman Unger Group.

Rosalie M. Arlinghaus
As Executrix of the Estate of Frank H. Arlinghaus — $ 37,842.17

~~Individually~~ Rosalie M. Arlinghaus — $ 3,236.74

Rosalie M. Arlinghaus
As Custodian for Frank Arlinghaus, Jr. — $ 2,543.16

Rosalie M. Arlinghaus
As custodian for John C. Arlinghaus — $ 2,543.16

Wm. H. Mac Callum
Wm. H. Mac Callum — $ 11,236.13

Alexandra Mac Callum
Alexandra Mac Callum — $ 1,258.46

Anna Marie Schlereth
Anna Marie Schlereth, — $ 8,114.98

Harry W. Bognards Jr.
Harry W. Bognards Jr. — $ 4,369.61

Elsie W. Cox
Elsie W. Cox — $ 554.87

Richard M. Hough
Richard M. Hough — $ 462.39

Ralph Del Coro
Ralph Del Coro — $ 231.19

Bertha A. Broglie
Bertha A. Broglie — $ 73.98

TEXAS
XXXXXXXXXXXXXXXXX — $ XXXXXXXXXXXXXXXXX

Rosalie M. Arlinghaus
As Custodian for Alix Ann Arlinghaus — $ 2,543.16

EXCERPTS FROM

EXHIBIT M

A No.

Q Thank you.

Can you give us, chronologically, the events which led up to the May, 1967 proposal, as far as you are aware of them?

A Mr. Shapiro had two money men who were interested in purchasing the company, a Mr. Stat from Wilmington, Delaware and a Mr. Zinman, Jacques Zinman from Philadelphia.

Their plan was to buy all the outstanding shares of Modern Teleservice at $15 a share.

Mr. Ritenour and I would participate in the new company as shareholders.

The $15 a share proposal was made to each of the shareholders. They all accepted, with the exception of Rosalie Arlinghaus; she thought the price was too low. It was renegotiated to $20 a share and everybody went along with it.

Q When did you first hear about the proposal which Harris Shapiro made?

(Witness looking at document.)

A In April of 1967.

Q What happened in April of 1967?

A Mr. Shapiro introduced Zinman and Stat to us.

Q You had met Mr. Shapiro before, had you not?

A I suppose he had been in the office before that time, yes.

Q Did you talk to him before about the possibility of someone acquiring some stock in Teleservice?

A No, not for some of the stock of Teleservice; for the sale of Teleservice.

Q Can you give us the substance of your conversations.

A No. It was just generalities. By that I mean, there was nothing definite. That we were an interested party, the company, Modern Teleservice, to a marriage with a larger company who would help us in our growth activities.

Q Is it fair to say, then, that the type of transaction that you and Shapiro first discussed was the merger of Teleservice into a larger company?

A I don't know if it's fair to say so. I'm sure it might have come up in our conversations. We were a willing bride.

MR. JENSEN: Off the record.

(Discussion off the record.)

Q The reporter has just reread the previous answer in which you referred to a possibility of merging into a larger company.

A That was one of the possibilities, yes.

Q Will you tell us everything you remember about your conversations with Mr. Shapiro about that possibility.

A First, you've got to remember that Mr. Shapiro was not only a broker, but a salesman, and he was actively looking at different companies to merge with one another so that he could make his fee, his living.

In our conversations -- and Mr. Shapiro made a habit of walking in and out of the office several times during a period of weeks -- and in our conversations around a table or a desk, he would tell us what his activities were and what he could do for our company in a merger with another company, either the same size as us or larger than us, and these possibilities were all discussed.

We were looking for the best route to go for expansion and growth.

Q Did he mention the name of any company with which he thought you might merge?

A No. He mentioned many companies that he had connections with, but not any -- he never mentioned any that were definite possibilities for us, no.

Q Can you tell me which companies he did mention.

A I don't remember offhand.

Q Do you remember any of them?

A No, I really don't. These were just conversations.

Q Did Shapiro ask you for information about the business of Teleservice?

A Well, I'm sure that he did. He'd have to know what we were all about in order to get us a marriage.

Q Did you answer his questions?

A I am sure I did.

Q Could you tell us what you told him.

A What our company was, how many people we had, what our activities were, approximately what our gross revenues were, what we were looking for in a marriage, what people could do for us, what other people could do for our company.

Q Approximately what period are we talking about now?

A March, April, 1967.

Q Had you ever met Mr. Shapiro prior to 1967?

A I really don't remember the first time I met Harris.

Q Did you discuss the price at which the company should be sold with Mr. Shapiro?

A That was pretty much left up in the air. The price had to be good for all the shareholders.

Q Did you discuss with Mr. Shapiro the possible methods of computing the price?

ALLCOUNT REPORTERS, INC.

A I, personally, did not.

Q Do you know whether anyone else did?

A No.

Q Did you furnish Mr. Shapiro with any materials reflecting the business of Teleservice?

A We may have.

Q Did anyone, to your knowledge, get out a presentation for him, either for his own use or for him to use in talking with prospects?

A No.

Q Did he bring in any prospects?

A No, not that I know of; no.

Q Excepting, now, Messrs. Zinman and Stat.

A Yes, Mr. Zinman and Stat.

Q When did you first hear about either Stat or Zinman?

A Probably in our conversations in April of 1967 or March of 1967.

Q Do you remember the occasion when you were first told of the interest of either one of them?

A I think Mr. Harris said --

Q Do you mean Shapiro?

A Harris Shapiro.

-- that there was a possibility that he could

Was it in the form of an employment contract?

A I'll send it to you, if you like. I don't remember whether it was an employment agreement or whether it's just a page listing down what would be done for me.

Q Don't send it to me, send it to your attorney. I am sure he will send me a copy.

MR. JENSEN: ~~I~~ You have no objection to that; do you, Mr. O'Keefe?

MR. O'KEEFE: I have no objection to him sending me a copy.

MR. JENSEN: Well, we'll take it from there.

Q Do you have a comparable draft or note sheet of what was to be done for Mr. Ritenour?

A No, I don't; just for myself.

Q Do you recall any of the items on that sheet or draft?

A As far as I was concerned?

Q Yes.

A That I was to be gifted twelve and a half percent ownership of the company; that I was to continue at my present salary; that were any dividends paid, I would participate in the dividends; that at a later date, I may have stock options.

Q Were they spelled out?

ALLCOURT REPORTING

A No.

Q Do you recall any other of the terms?

A No, I don't. This is five years ago and I have not looked at it in five years.

Q You mentioned the possibility of a five-year term a minute ago.

A Yes.

Q That was on it too, wasn't it?

A I'm sure it said that I would be given a five-year work contract.

Q Will you give us all of the conversations you had with either Shapiro or other members of the syndicate from the time of the sending of Plaintiff's Exhibit 13 until the closing.

A We were notified by Sidney Pepper, who was counsel for Rosalie Arlinghaus and the Estate, that $15 per share was not agreeable. I notified Harris Shapiro that $15 was not agreeable and that they had to come up with a higher figure.

Q What did he say to that?

A That any price was negotiable; that he would have to check with Stat and Zinman to see how much more financing they could get to come up with the $20 or whatever the new figure was per share.

have said?

A No.

Q (Continuing) Or what response you got?

A Well, it was a negative response. They wouldn't accept the $15 and wanted more.

Q Do you recall talking with Pepper yourself during this conversation?

A I don't recall exactly. I am sure there must have been some sort of polite words between us.

Q Do you recall anything more about the Rockefeller Center luncheon conversation as far as it bears on the sale of Teleservice stock?

A I think it was at this luncheon that I told Rosalie that I wanted shares of stock.

Q Can you tell us precisely what you told her.

A I think it was a sort of a plea that I had worked for almost twenty years for a company that I had helped formulate and give birth to and helped raise. There was no other company like this in existence. We were the founders of this type of print procurement service company; that by this time, in 1967, we had about forty competitors and we still thought we were the top in the field, and all of this hard work, and we were not asking for anything for free; we were willing to buy anything that would give us

ownership in the company.

Q Do you recall anything more of what you said to Mrs. Arlinghaus along these lines?

A Not really.

Q Did you at any time in Mrs. Arlinghaus' presence threaten that you would resign from the company if you could not buy stock?

A Of course not. Where would I go?

Q Did you ever do it in anybody else's presence?

A Yes.

Q When was that?

A I never threatened to resign in anyone's presence because I couldn't buy stock.

Mr. Ritenour and I had our tiffs and I threatened to resign in front of Mr. Ritenour, but that was long before stock was ever mentioned or we thought about formulating a new company, and that was only because it was an exasperating day, but threaten to resign because of not being able to buy stock, no.

Q Did you threaten or mention in front of Mrs. Arlinghaus that you would or might resign if you couldn't get stock?

A No, of course not.

Q Did you ever do so in anybody else's presence?

A No, never.

Q Did you ever hear rumors to that effect from anyone else prior to the institution of this lawsuit?

A Not really.

Q When you say "not really" --

A As in any business related to the advertising business, rumors fly constantly. There are thousands of rumors a day. I have had calls from advertising agencies, "John, I have heard you are resigning." Rumors like that fly constantly.

Q Did you ever hear rumors like that between the stockholders meeting that you testified about before and the June proposal?

A No.

Q Did you at any time hear any rumor from any other source that you had threatened to resign?

A No.

Q Did anyone at any time suggest to you that you had done so prior to the institution of this lawsuit?

A No.

Q Did you ever discuss with Mrs. Arlinghaus any suggestion that you had made such a threat?

A Did I ever?

Q Discuss or talk with Mrs. Arlinghaus about any

ALLCOURT REPORTERS, INC.

suggestion that you had made such a threat?

A No.

Q Will you tell us what happened after the Rockefeller Center luncheon, or have you already told us about that?

A Well, after that, when Sidney Pepper got back to us and said -- or a $20 per-share value was agreed upon, I contacted Harris Shapiro and said that they would buy $20 per share. He contacted Stat and Zinman and they agreed that $20 a share they would go along with and they were all set for closing.

Q Would you tell me what happened after that with respect to this transaction.

A I believe it was June 9th -- may I look at Mr. Ritenour's notes?

Q Sure thing.

(Witness so doing.)

A On June 9th, we met in Charlie Scharf's office for closing of the syndicate deal.

Q Do you have a present recollection of that meeting, sir?

A Yes. I'm not looking at his notes. There is nothing in these notes on it.

Q Will you tell us what your recollection is as to

may have settled down to fifteen percent. It's probably as much as we could afford, considering that we had trust funds, moneys that could be closed out that could be used to pay for the shares of stock.

Q Did Sidney Pepper in any of his conversations with you, either in connection with this proposal or in connection with the previous proposal, suggest in your presence that he use the ploy of telling the stockholders that you and Mr. Ritenour would quit if you should not get the shares you wanted?

A Yes, I believe he did.

Q Do you know when that was?

A It had to be during these conversations.

Q In other words, in connection with the June 30th proposal?

A Yes.

Q What did you say to him about that?

A Mr. Ritenour got a little violent, was going to throw Sidney out the window -- I think it was a pretty good reaction -- and said to him, "Sidney, if you ever do that, it will be a goddamn lie. You don't have my authority. We're not quitting," and I said, "Sidney, double goes for me. We have no intention of quitting. We don't want you to use it as a ploy. We don't want you to

ALLCOURT REPORTING

Q Was anyone else present, besides you and Mr. Ritenour or Mr. Pepper, on the occasion of that?

A No.

Q Did you ever hear Mr. Ritenour refer to such a rumor in Mrs. Arlinghaus' presence?

A No, because I probably wasn't there. If it happened, I don't know.

Q You never heard Mr. Ritenour refer to such a rumor in Mrs. Arlinghaus' presence; is that a correct statement?

A Yes.

Q Now, did you ever learn anything about the source of that rumor?

A No; I never learned the source of that rumor.

Q As you sit here now, you have no knowledge or indication of the source of that rumor?

A I could speculate, but I won't, because that would be dishonest.

Q No, I don't want you to speculate.

So the answer is no, I take it, to my question.

A The answer is, I don't know.

Q Now, this was a side trip. Let's get back to the negotiations leading up to the presentation of the June 30th proposal.

any negotiations with anybody that became fruitful, unless he brought us into it. He was a father to us.

Q Did he ever give you to understand that much?

A I had that understanding and that feeling, yes.

Q Based on something he told you?

A Possibly at a luncheon meeting, yes.

Frank took care of his brood and he wanted his brood to love the company as much as he did and he would never do anything to hurt anybody in the company. Frank could not even fire anybody.

Q Let's turn now to the period from the death of Frank Arlinghaus until the May proposal.

Let me ask you with respect to that period, did you at that time or did you subsequently learn of any feelers or discussions or expressions of interest in the sale of the company to any outsider?

A Yes. I probably can recollect a couple of instances.

Q Tell us what they were, please.

A Mr. Ritenour and I were invited over to Sixth Avenue to the Filmways offices where an exploratory meeting was held where Filmways would acquire Modern Teleservice.

Q When was that?

A I don't remember the date.

ALLCOURT REPORTERS, INC.

Can I look at this? Is it in here? (Indicating)

Q Let me first ask your unrefreshed recollection. Would it have been as early as 1965?

A No, it could not have been, because, you see, when I moved in from California in February of 1965, most of my efforts and activities were directed to moving and consolidating our offices in New York City to the west side, which took most of that year, and all of our efforts were in setting up new, modern, efficient offices.

Q Is it your testimony, then, that up until 1966, you made no effort to sell the company?

A Not to my recollection.

Q Did you start such efforts in 1966?

A Conceivably.

Q Do you recall approximately when you first embarked on those efforts?

A It conceivably was in 1966, because discussions were held at the Board of Directors meetings about a growth and expansion program that we had to have in our company in order to exist. Competitors were coming on very strong and very big with lots of capital, and the only way we possibly could meet this challenge was to, ourselves, grow. It was most difficult to grow from within because we didn't have the money, so I'm sure in our conversations in our Board of

Directors meetings -- and I couldn't tell you which one of the four in 1966 -- that we were given permission, Mr. Ritenour and myself, to make exploratory excursions into the idea of being merged or bought out by a company within the field or related field.

Q You are talking about a formal Board resolution giving you that -- or formal Board action giving you that authorization?

A I don't recollect whether it was formal Board action or discussion where we were given permission by the Board to do so, because we were not given permission to merge and/or talk and/or merge; we were only allowed to go out and survey the field, as any executive would be allowed to do so.

Q I believe you are talking about two different Board discussions.

A I may be talking about all four in 1966, because the conversation came up more than once, Mr. Jensen.

Q Are these discussions about the need for growth now pinpointed to 1966?

A I suspect that they were.

Q Was it also in 1966 that you got, for the first time, what you referred to as permission to go out and survey the field?

ALLCOURT REPORTERS, INC.

A I suspect so.

Q Had you done anything at all before that time, looking toward finding a possible purchaser of Teleservice stock or assets?

A I don't think so; not that I remember.

Q All right. Let's get back to the visit to Filmways' offices.

Let me ask you: Is that the first event about which you have any recollection which falls into the category of surveying the field for possible buyers, or were there earlier talks with someone else?

A I cannot put it in chronological order.

Keep in mind that I was Operations Manager and traveled in 1966, 1967 and '68 to the other offices, and it's difficult for me to pinpoint a meeting. I kept no diary.

Q Realizing now that you cannot necessarily remember the chronology, will you tell us about all of the meetings about which you remember which looked toward finding a possible purchaser for Teleservice.

Since you mentioned Filmways first, why don't we start there.

A You want me to tell you about Filmways?

Q What transpired at the meeting, yes, please.

Q Did you ever meet a Mr. A. Martin?

A May I ask who he is with?

MR. JENSEN: Off the record.

(Discussion off the record.)

Q Were you aware that Novo Industries at one time was interested, and if so, did you participate in any of the discussions or negotiations had with or about Novo Industries?

A If you were to meet Chet Ross, who was then President of Bonded, who now, I believe, is President of Novo, but I'm not sure, and because we were friendly competitors, we met with Chet many times in a twenty-year period, every time we met with Chet, he made an offer for Modern.

Q Do you recall or do you know whether Chet Ross at any time gave a figure?

A Chet Ross' way of working was not really a figure of money; it was that they would form a new company, and Bonded would put so much stock in and Modern would put so much stock in and you would go from there.

Q That's the only type of plan that he proposed as far as you are aware?

A That I am aware of.

Q Did you know that M.P.O., Incorporated was

***

Q Did you receive Plaintiff's 36? (Handing to the witness)

A It's familiar, but I don't remember. I mean, I don't remember receiving it. I do remember the substance of it and I don't know whether it was in this form or another form; it might have been this one.

Q Would you check your records, please, and see whether you received it in some other form.

A No, I don't have in my records any letter from Lewis, Stat or Zinman.

Q Did you receive Plaintiff's 42? (Handing to the witness)

A Yes. That's the same one that's been marked C several times.

MR. O'KEEFE: C twice and 19 once.

Q As long as it has a different number, we will mention it separately.

Did you sign Plaintiff's 52? (Handing to the witness)

A Yes. That's my signature.

Q Did you receive Plaintiff's 78? (Handing to the witness)

A Yes.

Q Did you receive Plaintiff's 79? (Handing to the

witness)

A Yes.

Q Did you sign Plaintiff's 80? (Handing to the witness)

A Yes.

Q I show you now Plaintiff's Exhibit 10 and ask you whether you have seen it before, and I ask you to read the third full paragraph on page 6. (Handing to the witness)

(Witness so doing.)

A I have never seen this.

Q Have you now read the paragraph that I indicated?

A Yes.

MR. JENSEN: I ask the reporter to set it up so that the record may be complete.

MR. O'KEEFE: Are you going to read it to her? Off the record.

(Discussion off the record.)

(Whereupon, the reporter copied the following:)

"After August 24, 1964 the Modern Teleservice, Inc. formula price was $124.2989 a share before the 20 for 1 stock split or $6.22 a share for the present stock. I have been informally informed by Mr. Ritenour

ALLCOURT REPORTING, INC.

EXHIBIT N

DEFENDANT'S EXHIBIT
U.S. DIST. COURT
S.D. N.Y.
N-Tenour

Pltfs. Ex 38 for id. 4/28/69 gj

10501 WILSHIRE BOULEVARD — APARTMENT 1812
LOS ANGELES, CALIFORNIA 90024

April 28, 1967

Mr. J. R. Ritenour
143 Overlook Drive
Greenwich, Connecticut

Dear Rich:

In accordance with your letter of April 25, 1967, I hereby tender to you and to John J. Lipsky all of my stock in Modern Teleservice, Inc. at a price of $15.00 a share.

This tender is made contingent upon my receiving the highest price per share paid by you or by John J. Lipsky to any other shareholder.

Sincerely,

Wm. H. MacCallum

William H. MacCallum

WHM:bh

EXHIBIT O

P.I.S. Ex.
40 for id.
7/27/69 gp.

E223

May 1, 1967

To: Mr. Hitchcock

Dear Mr.:

Referring to your letter of April 25th please be advised that I accept your offer and shall expect to pay me $15.00 a share for the stock I own in Modern Television, Inc.

Very sincerely,

Edward H. Cox
441 East 20th Street
New York, N.Y. 10010

E224

Pltfs. Ex. 39 for id. 8/28/69 gp

Anna Marie Schlereth
282 Teaneck Road
Ridgefield Park, N. J.

April 30, 1967

Mr. Rick,

In reply to your letter of April 25th, 1967, this is to advise you I will accept the offer made by you and John J. Lipsky to buy my share in Atlantic Laboratories, Inc. for $15.00 per share.

Very truly yours,

Anna Marie Schlereth

E225

P.S.E. Ex. 41
for id. 8/22/69 cp

May 2, 1967

Mr. Rich Ritenour
143 Overlook Drive
Greenwich, Connecticut

Dear Rich:

This will confirm receipt of your letter and our subsequent telephone conversation concerning its contents. I quite agree with your feelings about Teleservice and your relationship with its future. If it will help you to this end, I will go along with the sale of my stock. I do this reluctantly because I too am a great believer in Teleservice.

As a proposal I might add what may be a factor in obtaining the full support you need from the remaining parties. That the ultimate agreed price per share be either the $15.00 as offered or the actual value of each share at sale time, whichever is higher.

Sincerely,

H. W. Bogaards, Jr.
55 Highfield Ave.
Port Washington, N. Y.

EXHIBIT P

E227

Plf's Ex. 57
for id. 2/19/71

WILLIAM H. MacCALLUM
10501 WILSHIRE BOULEVARD — APARTMENT 1812
LOS ANGELES, CALIFORNIA 90024

August 1, 1967

Dear Rich—

Enclosed is the copy of your letter of July 28th 1967 which I have approved. I am also sending a copy to DeWitt, Pepper + Howell as you request.

The arrangements are fine. Thank you very much for taking care of the details so completely and so promptly.

Would Wed Sept 13th be satisfactory for the September Directors meeting? I have a meeting in Boston on Mon Sept 11th and Tues Sept 12th is the AMTPS annual meeting date.

Sincerely
Bill—

E228

WILLIAM H. MacCALLUM
10501 WILSHIRE BOULEVARD — APARTMENT 1812
LOS ANGELES, CALIFORNIA 90024

July 26, 1967

Plf's Ex. 53
for id. 3/19/71

Mr. J. R. Ritenour
619 West 54th Street
New York, N. Y.

Dear Rich,

I will sell to you twelve hundred sixty (1260) shares of Modern Teleservice, Inc., stock for twelve thousand six hundred dollars ($12,600.-) payable thirty-seven hundred eighty dollars ($3780.-) in cash and a note for eighty-eight hundred twenty dollars ($8820.-) payable in one year with interest at 6% payable quarterly. The note is to be secured by the stock until paid.

I also will sell to John Lipsky another twelve hundred sixty shares (1260) at the same terms.

If you and John accept this offer please let me know what escrow arrangements you desire to make for the holding of the certificates.

I would like to have a certificate for the remainder of my eighty-four hundred (8400) shares sent to me.

Yours sincerely

Wm. H. MacCallum

Wm H. MacCallum

E229
J. R. RITENOUR

July 28, 1967

Mr. Wm. H. Mac Callum
10501 Wilshire Blvd. Apt. 1812
Los Angeles, California 90024

Dear Bill,

I accept your offer in your letter to me of July 26, 1967, to sell me 1260 shares of Modern Teleservice, Inc. stock for ten dollars ($10.) a share.

Enclosed are my check to your order for $3,732.75, $3,780.00 less $47.25 New York Stamp Tax thereon, and my note for $8,820.00 to your order payable one year after date with interest at 6% per annum payable quarterly.

As arrangements have been made for all shares heretofor purchased by me to be held in escrow by DeWitt, Pepper and Howell, I have deposited with DeWitt, Pepper and Howell, a certificate for 1260 shares of Modern Teleservice, Inc. stock in my name with a blank stock power signed by me to be held as security for my note to you and with the right in DeWitt, Pepper and Howell to exchange such 1260 shares for the shares of any other corporation whose stock is received by you in connection with the balance of your Modern Teleservice, Inc. holdings and on the same terms. The new shares, if any, received on any such exchange with blank stock powers executed by me shall be held by DeWitt, Pepper and Howell as security for my said note. I have arranged with DeWitt, Pepper and Howell not to make any charge to you for such services.

In order that I may know that the enclosures reach you safely and that the escrow arrangements meet with your approval, will you please sign a copy of this letter and return it to me and sign a second copy and send it to DeWitt, Pepper and Howell.

Very sincerely

J. R. Ritenour

We are holding the aforesaid stock subject as aforesaid.

DeWitt, Pepper and Howell by Sydney Pepper

APPROVED William H. Mac Callum
William H. Mac Callum

EXHIBIT Q

E231

john j. lipsky

Received certificate
#28 for 5880 shares
of Modern Teleservice, Inc.
in my name

Dated: 7/31/67

Sig-ed William H. MacCallum

modern teleservice, inc

E232

WILLIAM H. MacCALLUM
10501 WILSHIRE BOULEVARD — APARTMENT 1812
LOS ANGELES, CALIFORNIA 90024

August 1, 1967

Dear John —

Enclosed is an approved copy of your letter to me of July 28th 1967. As you request I am also sending a copy to Delwith Peffer + Howell.

I am glad this worked out so simply and so promptly.

Thank you for sending the stock certificate for 7880 shares. I am enclosing the receipt.

I hope all works out smoothly for you and Rick.

Sincerely
Bill.

E233

JOHN J. LIPSKY

July 28, 1967

Mr. Wm. H. Mac Callum
10501 Wilshire Blvd.
Apt. 1812
Los Angeles, California 90024

Dear Bill:

I accept your offer in your letter to J. R. Ritenour of July 26, 1967, to sell me 1260 shares of Modern Teleservice, Inc. stock for ten dollars ($10.) a share.

Enclosed are my check to your order for $3,732.75, $3,780.00 less $47.25 New York Stamp Tax thereon, and my note for $8,820.00 to your order payable one year after date with interest at 6% per annum payable quarterly.

As arrangements have been made for all shares heretofor purchased by me to be held in escrow by DeWitt, Pepper and Howell, I have deposited with DeWitt, Pepper and Howell, a certificate for 1260 shares of Modern Teleservice, Inc. stock in my name with a blank stock ppwer signed by me to be held as security for my note to you and with the right in DeWitt, Pepper and Howell to exchange such 1260 shares for the shares of any other corporation whose stock is received by you in connection with the balance of your Modern Teleservice, Inc. holdings and on the same terms. The new shares, if any, received on any such exchange with blank stock powers executed by me shall be held by DeWitt, Pepper and Howell as security for my said note. I have arranged with DeWitt, Pepper and Howell not to make any charge to you for such services.

In order that I may know that the enclosures reach you safely and that the escrow arrangements meet with your approval, will you please sign a copy of this letter and return it to me and sign a second copy and send it to Dewitt, Pepper and Howell.

Very sincerely John J. Lipsky

APPROVED William H. MacCallum

We are holding the aforsaid stock subject as aforsaid.

DeWitt, Pepper and Howell by Sydney Pepper

EXHIBIT R

CONSENT

The undersigned, being respectively shareholders of Modern Teleservice, Inc., a New York Corporation (hereinafter called Modern) do hereby consent in writing, pursuant to Section 615 of the Business Corporation Law of the State of New York, to the adoption of the following resolutions:

RESOLVED that the proposed Plan of Reorganization and Agreement dated March 25, 1968, (hereinafter called the Plan and Agreement) between Modern and Sonderling Broadcasting Corporation, an Illinois Corporation (hereinafter called SBC), in the form attached hereto as Exhibit A, be, and it hereby is, in all respects approved and adopted;

RESOLVED, that Jr. R. Ritenour and John Lipsky, as President and Secretary, respectively, of Modern be and they hereby are authorized and directed to execute and deliver the Plan and Agreement; and that said Ritenour and Lipsky and the other officers and the directors of Modern be and they hereby are authorized to execute and deliver such further documents and instruments and to pay such fees and expenses as in their judgment are necessary, proper or advisable in order to implement the Plan and Agreement.

The undersigned respectively acknowledge that they have

read and considered the Plan and Agreement and have placed the signature of the undersigned on page 1 thereof.

We do further authorize any officer of Modern upon the receipt of the 130,000 shares of Sonderling Broadcasting Corporation capital stock to transfer to Commonwealth Corporate Development Co., Inc. 10,000 shares of said stock as and for its fee in connection with the said transaction.

IN WITNESS WHEREOF, the undersigned has caused this consent to be duly executed as of this 25th day of March, 1968.

Rosalie M. Arlinghaus, as executrix of the estate of Frank H. Arlinghaus, and as custodian for Alix Ann Arlinghaus, Frank H. Arlinghaus, Jr. and John C. Arlinghaus

Howard H. Eberle, Trustee U/A dated 5/18/65

William H. MacCallum

Anna Marie Schlereth

Harry W. Bogaards, Jr.

Elsie G. Cox

Miriam J. Pepper

John J. Lipsky

J. R. Ritenour

PLAN OF REORGANIZATION and AGREEMENT dated as of March 25, 1968, between SONDERLING BROADCASTING CORPORATION, an Illinois corporation (hereinafter called SBC), MODERN TELESERVICE, INC., a New York corporation (hereinafter called Modern), and J. R. RITENOUR and JOHN LIPSKY (hereinafter collectively called the Stockholders).

Modern desires to exchange and SBC desires to acquire substantially all Modern's properties solely for shares of voting Capital Stock, no par value, of SBC (hereinafter called SBC Capital Stock). Following the receipt by Modern of the SBC Capital Stock in exchange for substantially all its properties as contemplated herein, Modern proposes to distribute the SBC Capital Stock to its stockholders in exchange for their Modern stock. Now, therefore, the parties hereto agree as follows:

1. Plan of Reorganization. SBC and Modern hereby adopt a Plan of Reorganization pursuant to the provisions of Section 368(a)(1)(c) of the Internal Revenue Code of 1954, as amended, to be effectuated in the manner hereinafter set forth.

2. Transfer of Assets. (a) Upon the terms and subject to the conditions set forth in this Agreement, Modern agrees at the Closing (as hereinafter defined) to convey, assign, transfer and deliver to SBC, and SBC

;rees to acquire and accept from Modern all the assets, properties, good-
ill and business of Modern as a going concern (except the assets referred
in Section 2(b)), together with such additions thereto as shall occur from
ie date hereof to the Closing Date (as hereinafter defined), and the right to
se the name "Modern Teleservice, Inc." or similar names (said assets and
ights being hereinafter called the Acquired Assets).

(b) Anything hereinabove to the contrary notwithstanding, the
following assets and properties shall be retained by Modern:

(i) Cash not in excess of $10,000 in such amount as may be agreed upon by Modern and SBC to cover Modern's tax and other expenses in connection with its performance of this Agreement and its liquidation and dissolution. Modern shall promptly pay over to SBC, not later than December 31, 1968, such cash which Modern does not expend in payment of such expenses.

(ii) The minute books, stock books and corporate seal of Modern, provided that upon the dissolution of Modern, Modern shall deliver to SBC, as custodian, the corporate records and seal retained by Modern as provided in this Section 2(b)(ii).

Such books and records shall be available to Modern and its representatives for use in connection with tax matters and the liquidation of Modern and Modern shall have the right to borrow such documents and to make copies thereof for presentation in any litigation or proceeding in which Modern may be involved. Such books and records shall be preserved by SBC for at least six years after the Closing.

(iii) Modern's rights under this Agreement.

3. Consideration. (a) In consideration of the assignment, transfer and delivery of Modern's assets to SBC as provided herein, SBC shall at the Closing issue and deliver to or upon the order of Modern 130,000 shares of SBC Capital Stock. No certificates for fractional shares of SBC Capital Stock shall be issued to Modern or upon transfer of the SBC Capital Stock certificate or certificates issued to Modern. The references to number of shares of SBC Capital Stock in this paragraph shall be appropriately adjusted to reflect any stock dividend, split-ups, recapitalization or exchange of shares after the date hereof.

4. Assumption of Liabilities. (a) At the Closing SBC shall assume and agree to pay, perform and discharge:

(i) All the debts, liabilities, obligations contracts and commitments of Modern as

of the close of business on the Closing Date; and

(ii) All the federal, state and municipal tax liabilities of Modern except for transactions occurring after the Closing Date.

(b) Notwithstanding the foregoing, SBC shall not assume or be obligated to pay, perform or discharge:

(i) Liabilities or obligations of Modern to make distributions to its stockholders as dividends in liquidation or otherwise;

(ii) Liabilities and obligations of Modern under or with respect to any transaction occurring after the Closing Date;

(iii) Liabilities and obligations of Modern incurred in connection with or related to the transfer of assets and business pursuant to this Agreement, or in connection with Modern's liquidation and dissolution;

(iv) Any liabilities or obligations, under employment agreements or otherwise, to any of Modern's officers, directors or stockholders (except with regard to salary or wages for services rendered on or prior to the Closing Date); and

(v) Modern's obligations under its Profit Sharing Plan.

(c) Nothing contained in the Section 4 shall relieve Modern or the Stockholders from any obligation under covenants, warranties or agreements contained in this Agreement.

5. The Closing, Etc. (a) Consummation of the transfer and acquisition of the assets hereunder shall constitute the Closing and the place, date and time of the Closing shall be at the offices of The Corporation Trust Company, 15 Exchange Place, Jersey City, New Jersey, at 2 p.m. on the 9th day of April, 1968, or at such time and place as Modern and SBC may mutually agree (said time and place of Closing are herein called the Closing Date).

(b) At the Closing Modern will execute and deliver to SBC proper instruments of assignment, conveyance and transfer, in the form approved by counsel for SBC, of all its right, title and interest in and to all of the Acquired Assets.

(c) At the Closing SBC will issue and deliver to Modern shares of SBC Capital Stock as provided herein.

(d) On the Closing Date Modern will change its name to such other dissimilar name as will permit SBC to use the name of Modern or to use a subsidiary having the name of Modern, or a name similar thereto to carry on the business of Modern and to qualify such subsidiary in all states in which Modern is engaged in business and Modern will, in connection therewith, execute such consents to said use or incorporation, or qualification as may, in the opinion of counsel of SBC, be necessary or expedient.

6. Dissolution of Modern. Modern agrees as soon as practicable after the Closing Date to take all necessary and appropriate proceedings under the laws of the State of New York for dissolving and distributing the shares of SBC Capital Stock to be received by it pursuant to this Agreement among its stockholders pro rata in accordance with their respective interests.

7. Representations and Warranties of Modern and Stockholders. Modern and the Stockholders, jointly and severally, represent, warrant and agree as follows:

(a) Organization and Qualification of Modern. Modern is a corporation duly organized, validly existing and in good standing under the laws of New York and is duly qualified as a foreign corporation and is in good standing in New Jersey, Illinois and California. Modern has the corporate power and is entitled to carry on its business and to own, lease and operate its properties in the places where such business is now conducted and such properties are now owned, leased and operated.

(b) Subsidiaries. Modern has one wholly-owned subsidiary, Modern Teleservice, Inc., a Delaware corporation (hereinafter called MTS), which does not own any properties or assets and does not conduct any business. Modern owns all the issued and outstanding stock of MTS free and clear of all liens, charges or encumbrances of any nature whatsoever. There are no outstanding warrants, options or other commitments relating to the authorized and unissued or to the issued shares of MTS.

(c) Capital Stock. The authorized capital stock of Modern consists of 100,000 shares of Common Stock, $1 par value. There are

presently issued and outstanding 58,800 shares of such Common Stock, all of which are duly and validly issued, fully paid and nonassessable. Modern holds no shares of its Common Stock in its treasury. There are no outstanding warrants, options or other commitments relating to the authorized and unissued shares of such Common Stock.

(d) Financial Statements. The balance sheets of Modern as of December 31, 1964, 1965, 1966, 1967 and the statements of income for the four years ended on those dates, heretofore delivered to SBC, have been prepared in conformity with generally accepted accounting principles applied on a consistent basis and fairly present the results of operation for the respective periods indicated in such income statements. The balance sheets as of December 31, 1964, 1965, 1966, 1967 and the statements of income for the years then ended have been certified by Main Lafrentz and Company, independent public accountants. On December 31, 1967, Modern had no obligations or liabilities, absolute or contingent, which are not shown or provided for in its balance sheet as of December 31, 1967, except (i) those expressly listed in any exhibit attached hereto and (ii) obligations or liabilities arising out of the operation of Modern's business in the ordinary course and not commonly required to be referred to in financial statements.

(e) Real Property. Attached hereto as Exhibit A is a brief description of all real property leased to Modern. Modern has valid and enforceable leases not in default with respect to the premises purported to be leased by it, free and clear of all liens, mortgages, charges or encumbrances of any nature whatsoever except those described in Exhibit A. Modern does

not own and has not contracted to purchase or acquire any real estate or any interest therein other than as lessee as set forth in Exhibit A.

(f) Personal Property. Modern owns or leases all the personal property reflected in its balance sheet at December 31, 1967, free and clear of all mortgages, liens, charges or encumbrances of any nature whatsoever except as stated in Exhibit B attached hereto. The machinery and equipment owned or leased by Modern are in good operating condition and repair and are adequate for the use to which they are put.

(g) Patents. Modern does not own and is not a licensee of any patents, copyrights, trademarks or applications therefor. Modern owns or possesses adequate licenses or rights to use, all patents, trade secrets, trademarks, trade names or copyrights necessary to conduct its business as now operated.

(h) Contracts and Commitments. Except as set forth in Exibits B and C attached hereto, Modern is not a party to any written or oral, express or implied (i) contract or commitment for the employment of any officer or employee, (ii) contract or commitment to any labor union, (iii) lease to it as lessee of personal property with an unexpired term of 180 days or more, (iv) contract for the supply of materials, supplies, equipment or services by it, (v) continuing contract or commitment for the future purchase of materials, supplies, equipment or services, (vi) lease under which it is lessor, (vii) bonus, pension, profit sharing, retirement, stock purchase or stock option plan or any hospitalization, insurance or similar plan or practice, formal or informal, in effect with respect to employees or others,

(viii) franchise, distribution or sales agency contract or commitment, (ix) insurance policy, or (x) material contract or commitment not made in the ordinary course of business. Except as described in Exhibit C all rights of Modern in and to each of the contracts, agreements, and other instruments set forth in Exhibit C are transferable and assignable to SBC without the consent or approval of the other party thereto.

(i) Litigation. There are no actions, suits or proceedings (whether or not purportedly on behalf of Modern) pending, or to the knowledge of Modern threatened against Modern which involve the likelihood of any adverse judgment or liability not fully covered by insurance or which may result in any material adverse change in the business, properties or assets or in the condition, financial or otherwise, of Modern. Modern does not know of any order, writ, injunction or decree that has been issued by, or requested of, any court or governmental agency which does or may result in any material adverse change in its business, properties or assets or in its condition, financial or otherwise.

(j) Taxes. The amounts set up as provisions for taxes on the balance sheet of Modern as of December 31, 1967, are sufficient, to the best of Modern's knowledge and belief, for the payment of all unpaid federal, state and local taxes of Modern, accrued for or applicable to the period ended on such balance sheet date and all periods prior thereto. Modern has filed all income, excise, property and other tax returns required to be filed by it by the United States of America and any state or other political subdivision thereof, and has paid all taxes which have become due pursuant to such returns and pursuant to any assessment which has been received by it. Federal

income tax returns of Modern have been examined by the Internal Revenue Service through the year ended December 31, 1965, and all deficiencies proposed as a result of such examination have been paid or settled.

(k) Compliance with Law. To the best of the knowledge and belief of Modern it has complied in all material respects with all laws, regulations and orders applicable to its business.

(l) Insurance. The business properties and assets of Modern of an insurable nature are insured in the amounts and against the risks normally insured against by companies engaged in a business similar to that of Modern.

(m) Accounts Receivable. All accounts receivable of Modern are current and collectible except to the extent that a reserve for bad debts, not in excess of $10,000, has been established therefor.

(n) No Default. The execution and delivery of this Agreement and compliance with the terms hereof by Modern will not conflict with, or result in the breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation of any lien, charge or encumbrance upon, any of the properties or assets of Modern pursuant to any corporate charter, by-law indenture, mortgage, lease, agreement, or other instrument to which Modern is a party or by which it is bound.

(o) Performance of Obligations. Modern has in all respects performed all obligations required to be performed by it to date and is not in default in any respect under any contracts, agreements, leases or other instruments to which it is a party or by which it is bound. True and correct

copies of all documents described in any exhibit attached hereto have heretofore been delivered to SBC.

(p) Post Balance Sheet Changes. Since December 31, 1967, Modern has not (i) issued any stock, bonds, or other corporate securities, (ii) incurred any obligations or liability (absolute or contingent) other than current liabilities incurred, and obligations under contracts entered into, in the ordinary course of business, (iii) declared or made any payment or distribution to stockholders, except for a dividend not in excess of $.35 per share, or purchased or redeemed any shares of its capital stock, (iv) mortgaged, pledged or subjected to lien, charge or any other encumbrance of its assets, tangible or intangible, other than the lien of current personal property taxes not yet due and payable, (v) sold assigned or transferred any of its assets or cancelled any debts or claims, other than in the ordinary course of business, (vi) suffered any extraordinary losses or waived any rights of substantial value, whether or not in the ordinary course of business, or (vii) entered into any transactions other than in the ordinary course of business.

(q) Execution. The execution and delivery of this Agreement and the transfer of assets of Modern contemplated hereby has been duly and validly authorized by the Board of Directors of Modern.

(r) Representations and Warranties. The representations and warranties made in this Section 7 will be true and correct in all material respects on and as of the Closing Date with the same force and effect as though such representations and warranties had been made on the Closing Date.

8. Representations and Warranties of SBC. SBC represents, warrants and agrees as follows:

(a) Organization and Qualification. SBC is a corporation duly organized, validly existing and in good standing under the laws of the State of Illinois, SBC has the corporate power and authority to carry on its business and to own or lease its properties in the places where such business is now conducted and where such properties are now owned or leased. SBC is in good standing in every jurisdiction in which the nature of its business makes such qualification necessary. SBC has an authorized capital stock consisting of 2,000,000 shares. As of December 31, 1967, there were 800,000 shares of SBC Capital Stock, no par value, issued and outstanding, fully paid and non-assessable.

(b) Financial Statements. SBC has delivered to Modern its consolidated balance sheet as of December 31, 1967, and statement of consolidated income and expense for the twelve months then ended. Said financial statements have been prepared in conformity with generally accepted accounting principles applied on a consistent basis and present fairly the consolidated financial condition of SBC and its consolidated subsidiaries as of December 31, 1967, and the results of their operations for the twelve months then ended.

(c) Execution. The Board of Directors of SBC has duly and validly approved this Plan of Reorganization and Agreement and has authorized the execution and delivery by the proper officers of SBC of this Plan of Reorganization and Agreement and the performance by SBC of all the acts and transactions contemplated hereby.

(d) SBC Capital Stock. SBC has the authority to issue the shares of SBC Capital Stock to be issued in exchange for the assets of Modern and such shares of SBC Capital Stock when delivered to Modern, will be duly and validly issued, fully paid and nonassessable. The shares of SBC Capital Stock to be delivered pursuant to this Agreement will be duly listed upon the American Stock Exchange and SBC will have the authority to deliver said shares to Modern free and clear of all liens, claims and encumbrances whatsoever.

(e) No Material Adverse Changes. Since December 31, 1967, there has been no material adverse change in the condition, financial or otherwise, of SBC and its consolidated subsidiaries as shown on the consolidated balance sheet as of December 31, 1967.

(f) Litigation. Except as set forth in Exhibit D attached hereto, there are no actions, suits or proceedings (whether or not purportedly on behalf of SBC or its subsidiaries) pending, or to the knowledge of SBC threatened, against SBC or its subsidiaries which involve the likelihood of any adverse judgment or liability not fully covered by insurance or which may result in any material adverse change in the business, properties or assets or in the condition, financial or otherwise, of SBC. SBC does not know of any order, writ, injunction or decree that has been issued by, or requested of, any court or governmental agency which does or may result in a material adverse change in its business, properties or assets or in its condition, financial or otherwise.

(g) No Default. The execution and delivery of this Agreement and compliance with the terms thereof by SBC will not conflict with or result in the breach of the terms, conditions or provisions of, or constitute a default

under, or result in the creation of any lien, charge or encumbrance upon, any of the properties or assets of SBC pursuant to any corporate charter, by-law, indenture, mortgage, lease, agreement or other instrument to which SBC is a party or by which it is bound.

(h) Representations and Warranties. The representations and warranties made in this Section 8 will be true and correct in all material respects on and as of the Closing Date with the same force and effect as though such representations and warranties had been made on the Closing Date.

9. Covenants of Modern. Modern covenants and agrees as follows:

(a) As soon as practicable after the date of this Agreement Modern will procure the written consent of its stockholders to, or call a meeting of its stockholders for the purpose of considering and taking action on, this Plan of Reorganization and Agreement, the dissolution of Modern and the distribution of its remaining assets among its stockholders.

(b) From the date of this Agreement until the Closing Date Modern will conduct its business diligently in substantially the same manner as heretofore conducted and use its best efforts to preserve its business organization intact, to keep available to SBC its present employees and to preserve for SBC Modern's relationship with its suppliers, customers and others having business relations with it.

(c) From the date hereof through the Closing Date, Modern will not (i) incur any obligation or liability (absolute or contingent), except current liabilities incurred, and obligations under contracts entered into, in the ordinary course of business; (ii) mortgage, pledge or voluntarily subject to lien, charge or other encumbrance any assets, tangible or intangible; (iii)

sell or transfer any of its tangible assets or cancel any debts or claims, except in each case in the ordinary course of business; (iv) sell, assign or transfer any intangible assets; (v) waive any right of any substantial value; or (vi) enter into any transaction or series of transactions other than in the ordinary course; except in each case as allowed by this Agreement or with the prior written consent of SBC and except further that Modern may pay to its Profit Sharing Trust the amount it is obligated to pay under its Profit Sharing Plan with respect to its 1967 earnings. Modern represents that the total payroll of persons eligible to participate under its Profit Sharing Plan will not exceed $300,000 for 1967.

(d) From and after the Closing Date, Modern will not engage in any activity except as required to complete its liquidation and dissolution and the distribution of shares of SBC Capital Stock as provided for in this Agreement.

(e) All income, franchise, sales and other tax returns and reports of Modern which have not been filed prior to the date hereof (including those relating to periods after the Closing Date) shall be prepared by Modern, but shall not be filed without prior examination and approval of SBC's counsel, which approval shall not be unreasonably withheld. If such returns are not filed because of SBC's refusal to approve them, SBC shall hold Modern and its stockholders and distributees harmless from all proceedings brought by tax authorities.

11. Conditions to Obligations of SBC. The obligations of SBC hereunder are, at the option of SBC, subject to the conditions that, at the Closing Date:

(a) All the terms, covenants and conditions to be complied with or performed by Modern on or before the Closing Date shall have been fully complied with or performed in all material respects.

(b) The representations and warranties made by Modern and the Stockholders herein shall be correct in all material respects, on and as of the Closing Date, and Modern shall have cause to be delivered to SBC a certificate to that effect dated the Closing Date and signed by Modern and the Stockholders.

(c) All actions, proceedings, instruments and documents required to carry out this Agreement by Modern or incident thereto, and all other related matters, shall have been approved by counsel for SBC.

(d) SBC shall have received the opinion of Messrs. Dewitt, Pepper and Howell, counsel for Modern, dated the Closing Date, in form and substance satisfactory to SBC's counsel, to the effect that: (i) Modern is a corporation duly organized, validly existing and in good standing under the laws of the State of New York and is duly qualified and in good standing as a foreign corporation in New Jersey, Illinois and California, (ii) Modern has full power and authority to convey, assign, transfer and deliver its assets to SBC as provided in this Agreement, (iii) all corporate and other proceedings required to be taken by or on the part of Modern to authorize it to carry out this Agreement and to convey, assign, transfer and deliver to SBC the Acquired Assets in accordance with this Agreement have been duly and properly taken, (iv) this Agreement has been duly executed by Modern and the Stockholders and is a legal, valid and binding obligation of Modern and the Stockholders in accordance with its terms, and, (v) the instruments delivered by

Modern to SBC have been duly authorized, executed and delivered, are legal, valid and binding in accordance with their terms, sufficient for purposes of recordation and filing where permitted by law and have vested in SBC all right, title and interest of Modern in the Acquired Assets.

(e) Each of the Stockholders shall have entered into employment agreements with SBC or one of its subsidiaries.

(f) Each of the Stockholders will from the date hereof to the Closing Date continue to be employed as an officer of Modern.

(g) SBC shall have received from each "affiliate" of Modern as defined in Rule 133 of the General Rules and Regulations under the Securities Act of 1933 an agreement not to dispose of the shares of SBC Capital Stock received hereunder except in accordance with the limitations of such Act.

11. Conditions to Obligations of Modern. The obligations of Modern hereunder are, at the option of Modern, subject to the conditions that, at the Closing Date:

(a) All the terms, covenants and conditions of this Agreement to be complied with or performed by SBC on or before the Closing Date shall have been fully complied with or performed in all material respects and the consents referred to in Section 8(g) have been obtained.

(b) The representations and warranties made by SBC herein shall be correct in all material respects, on and as of the Closing Date, with the same force and effect as though such representations and warranties had been made on the Closing Date and SBC shall have caused to be delivered to Modern a certificate to that effect dated the Closing Date and signed by SBC.

(c) All actions, proceedings, instruments and documents required to carry out this Agreement or incident thereto, and all other related legal matters, shall have been approved by counsel for Modern.

(d) Modern shall have received an opinion of Becker & Silberberg, Counsel for SBC, dated the Closing Date, in form and substance satisfactory to Modern's counsel, to the effect that (i) SBC is a corporation duly organized, validly existing and in good standing under the laws of the State of Illinois; (ii) SBC has full power to acquire the assets as provided herein, (iii) all corporate and other proceedings required to be taken by or on the part of SBC to authorize it to carry out the Plan of Reorganization and Agreement and to deliver the shares of SBC Capital Stock in accordance with this Plan of Reorganization and Agreement have been duly and properly taken, (iv) this Plan of Reorganization and Agreement has been duly executed by SBC and is a legal, valid and binding obligation of SBC in accordance with its terms, (v) the shares of SBC Capital Stock to be delivered hereunder when issued will be validly issued, fully paid and nonassessable, (vi) the delivery of shares of SBC Capital Stock to Modern and by Modern to its stockholders in dissolution does not require registration under the Securities Act of 1933, as amended, and (vii) the shares to be delivered hereunder have been duly listed under the American Stock Exchange.

(e) The holders of more than two-thirds of the issued and outstanding capital stock of Modern shall have voted in favor of, or the holders of all such stock shall have consented to, the transfer of Modern's properties and assets to SBC under this Agreement.

12. Conditions to the Respective Obligations of SBC and Modern. The respective obligations of SBC and Modern are, at the option of SBC and Modern, respectively, subject to the further condition that:

(a) No action or proceeding shall be pending or threatened on the Closing Date wherein an unfavorable judgment decree or order would prevent or make unlawful the carrying out of this Agreement or would cause the transaction contemplated by this Agreement to be rescinded or would require SBC to divest itself of any of the business or assets of Modern; in the event of the receipt of any communication from any person or department or agency of government, prior to the Closing Date with regard to the transactions contemplated hereby, SBC shall be the sole judge of whether such communication shall be interpreted as a threat of such proceeding.

(b) The Closing hereunder shall have occurred on or prior to June 1, 1968.

13. Covenants of Stockholders. Each of the Stockholders covenants and agrees that (i) at any stockholders meeting of Modern which will act upon this Agreement, he will vote all shares of Modern's stock which he owns in favor of adopting this Agreement and will recommend to the other stockholders that they vote their shares of Modern in favor of this Agreement or (ii) he will consent in writing to the adoption of this Agreement by Modern.

14. Access to Premises. Between the date hereof and the Closing Date Modern will afford the officers and authorized representatives of SBC free and full access to the premises, properties, books and records of Modern in order that SBC may have full opportunity to make such investigations

as it shall desire, and the officers of Modern will furnish SBC with such additional financial and operating data and other information as to the business and properties of Modern as SBC shall from time to time reasonably request.

15. Expenses; Finders' Fees. Except as otherwise provided herein, SBC and Modern shall each pay its own expenses in connection with this Agreement and the transactions contemplated hereby. The brokerage fees of Corporate Finders & Consultants, Inc. will be paid by SBC. SBC agrees to indemnify Modern against any claims of third parties for brokerage commissions or finders' fees in connection with the transactions contemplated hereby insofar as such claims are alleged to be based on arrangements or agreements made by SBC, and Modern agrees to indemnify SBC against any such claims insofar as they are alleged to be based on arrangements or agreements by Modern or its stockholders.

16. Survival of Representations. The covenants, representations and warranties contained in this Agreement shall survive the Closing hereunder.

17. Miscellaneous. (a) The parties may, by written agreement, (i) extend the time for the performance of any of the obligations or other acts of the parties hereto, (ii) waive any inaccuracies in the representations contained in this Agreement or in any document delivered pursuant to this Agreement, and (iii) waive compliance with or modify any of the covenants contained in this Agreement and waive or modify performance of any of the obligations of any of the parties hereto. Any agreement on the part of either party for any such extension, modification or waiver shall be validly and sufficiently authorized for the purposes of this Agreement if authorized by the President or a

Vice President of such party, in the case of Modern and SBC, and by the Stockholders.

(b) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, provided, this Agreement shall not be assigned by SBC, except to a wholly-owned subsidiary. In the event of an assignment by SBC of any of its rights hereunder to a wholly-owned subsidiary of SBC, the fulfillment by such subsidiary of the conditions to Modern's obligations hereunder shall satisfy such conditions.

(c) All notices, consents, requests, instructions, approvals and other communications provided for herein shall be validly given, made or served, if in writing and delivered personally or sent by registered mail, postage prepaid, if to Modern, or the Stockholders, addressed to Modern, attention J. R. Ritenour, 619 West 54th Street, New York, New York, 10019, and if to SBC, attention Egmont Sonderling, 666 East Ocean Boulevard, Long Beach, California, 90802, and A. Harry Becker, 1001 Pennsylvania Building, Washington, D. C., 20004.

(d) This instrument and the exhibits annexed hereto and made a part hereof contain the entire agreement between the parties hereto with respect to the exchange and acquisition of assets and the other transactions contemplated herein, supersede all prior agreements or understandings between the parties hereto relating to the subject matter hereof and shall be governed by the law of the State of New York.

(e) This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and their respective corporate seals to be affixed hereto, all as of the day and year first above written.

SONDERLING BROADCASTING CORPORATION

(Corporate Seal)

ATTEST:

Mason A. Loundy
Asst. Secretary

By _____
Egmont Sonderling
President

MODERN TELESERVICE, INC.

(Corporate Seal)

ATTEST:

Richard Russell
Asst. Secretary

By _____
J. R. Ritenour
President

STOCKHOLDERS

J. R. Ritenour

John Lipsky

NEW YORK CHICAGO LOS ANGELES

Modern Teleservice, Inc.

9 WEST 54th STREET, NEW YORK, N. Y. 10019 765-4500 Teletype NY 212 — 640-6662

EXHIBIT A

MODERN TELESERVICE, INC.
LEASED REAL PROPERTY

MOVIELAB INC.
619 WEST 54TH STREET
NEW YORK, NEW YORK

ENTIRE 4TH FLOOR AT 619 WEST 54TH STREET
EXPIRES APRIL 30, 1970 - ANNUAL RENTAL $38,500.00

HARRIS TRUST & SAVINGS
TRUST #31557
AGENT: HOWARD L. STORCH
201 EAST OHIO STREET
CHICAGO, ILLINOIS

ENTIRE 2ND FLOOR AND PORTION OF BASEMENT
AT 201 EAST ERIE STREET, CHICAGO, ILLINOIS
EXPIRES DECEMBER 31, 1970 - ANNUAL RENTAL 24,000.00

THE PLAYGOER, INC.

ENTIRE 1ST AND 2ND FLOOR OF 1150 NORTH
McCADDEN PLACE, LOS ANGELES, CALIFORNIA
EXPIRES SEPTEMBER 30, 1973 - ANNUAL RENTAL 18,000.00

EXHIBIT B

LEASED PERSONAL PROPERTY

ALLEN BROTHERS, INC.

ONE (1) COMPANY AUTOMOBILE
EXPIRES: OCTOBER 26, 1969 -- ANNUAL RENTAL $2,760.00

NEW YORK CHICAGO LOS ANGELES

Modern Teleservice, Inc.

19 WEST 54th STREET, NEW YORK, N. Y. 10019 765-4500 Teletype NY 212 — 640-6662

EXHIBIT C

MODERN TELESERVICE, INC.
EMPLOYEE BENEFITS

GROUP LIFE AND EXTENDED MEDICAL
MASSACHUSETTS MUTUAL
POLICY #G1-14366

DISABILITY
UNION MUTUAL
POLICY #12235

ZURICH INSURANCE COMPANY
POLICY #1512060 (CHICAGO EMPLOYEES)
POLICY #01875049 (NEW YORK EMPLOYEES)

HOSPITALIZATION
BLUE CROSS - BLUE SHIELD
(EMPLOYEE EXPENSE)
EXCEPT CHICAGO UNION PERSONNEL ($112.00 PER MONTH)

TOTAL: APPROX. COMPANY EXPENSE $590.00 PER MONTH

PROFIT SHARING PLAN

Resolution of Board of Directors adopted on September 13, 1965, relating to death benefits for J. R. Ritenour and John Lipsky, copy of which has been furnished to SBC.

NEW YORK CHICAGO LOS ANGELES

Modern Teleservice, Inc.

WEST 54th STREET, NEW YORK, N. Y. 10019 765-4500 Teletype NY 212 — 640-6662

EXHIBIT C

MODERN TELESERVICE, INC.
COMPANY INSURANCE

OFFICERS LIFE	ANNUAL COST
MASSACHUSETTS MUTUAL	
POLICY #4-075-146	$5,992.00 LIPSKY
POLICY #4-030-536	5,476.00 RITENOUR
POLICY #4-045-466	8,210.00 RITENOUR

NEW YORK CHICAGO LOS ANGELES

Modern Teleservice, Inc.

519 WEST 54th STREET, NEW YORK, N. Y. 10019 765-4500 Teletype NY 212 — 640-6662

EXHIBIT C

MODERN TELESERVICE, INC.
UNION CONTRACTS

NEW YORK:

MOTION PICTURE MACHINE OPERATORS
UNION LOCAL #306 EXPIRES: JANUARY 16, 1970

I. A. T. S. E. FLIM EXCHANGE EMPLOYEES
UNION LOCAL B-51 EXPIRES: APRIL 30, 1968

CHICAGO:

MOTION PICTURE LABORATORY TECHNICIANS
UNION LOCAL #780 EXPIRES: AUGUST 31, 1968

LEASED PERSONAL PROPERTY

ALLEN BROTHERS, INC.

ONE (1) COMPANY AUTOMOBILE
EXPIRES: OCTOBER 26, 1969 ANNUAL RENTAL: $2,760.00

An action was commenced on July 12, 1965, against KDIA, Inc., a subsidiary of SBC (KSAN, Inc. vs. KDIA Radio Broadcasting Corporation, et al., Superior Court of California, San Francisco, Docket No. 556897) charging that the Defendant had appropriated to its use, for a short period, a trade name owned and used by the Plaintiff in respect of a "disc jockey" who had been employed by the Defendant after terminating his employment with the Plaintiff. The Complaint requests compensatory damages in the sum of $1.00 and punitive damages in the sum of $1,000,000. Counsel for the Plaintiff has advised the Defendant that it need not plead in the above action unless it has received a written demand from Plaintiff's counsel for such pleading. No such demand has been received by the Defendant to date. In the opinion of counsel for KDIA, Inc., the action is of little merit and no material liability to KDIA, Inc. will result from the action.

SCHEDULE OF CURRENT INSURANCE

MODERN TELESERVICE, INC.
619 W. 54th Street
New York, New York 10019

COVERAGE	Amount or Limits	Term in Years	Expires	Company	Policy Number	Premium	COMMENTS
Package Contract 'ALL RISK' Physical Damage	1)150,000 2) 30,000 3) 50,000	1	1/1/69	Centennial	291-626-448	Ann Dep	1)619 W. 54th St., NYC 2)201 W. Erie, Chicago 3)1153 N. McCadden, Los Angeles
Extra Expense Location (1)	50,000						Earthquake covered in California
Comprehensive General Liability	500/1,000 50,000						
Transit	5,000						
Property in Custody of any one customer	300.						
Property in any unnamed location	10,000						

SCHEDULE OF CURRENT INSURANCE

MODERN TELESERVICE, INC.
619 W. 54th Street
New York, New York 10019

COVERAGE	Amount or Limits	Term in Years	Expires	Company	Policy Number	Premium	COMMENTS
Blanket Catastrophe Liability Policy (Umbrella)	5,000,000	3	1/1/69	I N A	XBC 1891	$1,025.	Excess of basic auto & liability policies. Uninsured losses subject to 10,000 ded.
Above for:							
J. R. Ritenour	1,000,000	3	12/10/68	I N A	XIC 2875	207.	As above
John J. Lipsky	"		7/6/69	"	XIC 60499	207.	
Richard A. Russell	"		7/6/69	"	XIC 60484	207.	
Valuable Papers & Records	1)5,000 2)3,000 3)3,000	3	4/26/70	Royal Ind Co	WQS237815	159.	For Reconstruction of Acct's Rec. Records
Comprehensive Crime Coverage	100,000	3	12/31/69	Royal Ind Co	509400	524.20	100,000 Employee Dishon. 100,000 Deposit Forgery 25,000 " " Personal Account J. R. Ritenour

E266

SCHEDULE OF CURRENT INSURANCE

MODERN TELESERVICE, INC.
619 W. 54th Street
New York, New York 10019

COVERAGE	Amount or Limits	Term in Years	Expires	Company	Policy Number	Premium	COMMENTS
Workmen's Compensation	Stat.	1	1/1/69	Atlantic Mut.	400321909	$2.252 Deposit	Employers Liability - $100,000
D B L	Stat.	Cont.	Cont.	Zurich	GD1512060	----	Chicago Employees
D B L	"	"	"	"	1875049	----	New York Employees
Error & Omissions	$25,000	3	1/1/69	Lloyds	L130657	Ann Dep $5,000	
Comprehensive Auto Liability	500/1,000,000 Bodily Injury 25,000 P.D.	1	1/1/69	Atlantic Mut.	366002968	$44.80	

E267

SCHEDULE OF CURRENT INSURANCE

MODERN TELESERVICE, INC.
619 W. 54th Street
New York, New York 10019

COVERAGE	Amount or Limits	Term in Years	Expires	Company	Policy Number	Premium	COMMENTS
Travel Accident Ins.	100,000 50,000 25,000	3	1/1/70	Continental	GTA 1683	$728.80	Class I - Over $20,000 Class II - $10-20,000 Class III - Under $10,000
Special Property Floater	Scheduled	3	12/31/69	Atlantic Mut.	222-085 367	744.00	Covers Projection & re- lated Photographic Equip.
Excess Fire Property Damage	See Comment	3	10/1/70	Home	468925	$6,200	

LOCATIONS:
1) 1153 McCadden, Los Angeles
2) 619 W. 54th Street, NYC
3) 1322 W. Belmont, Chicago
4) 201 W. Erie, Chicago

LIMITS	BASIC
500,000	50,000
580,000	75,000
20,000	10,000
485,000	105,000